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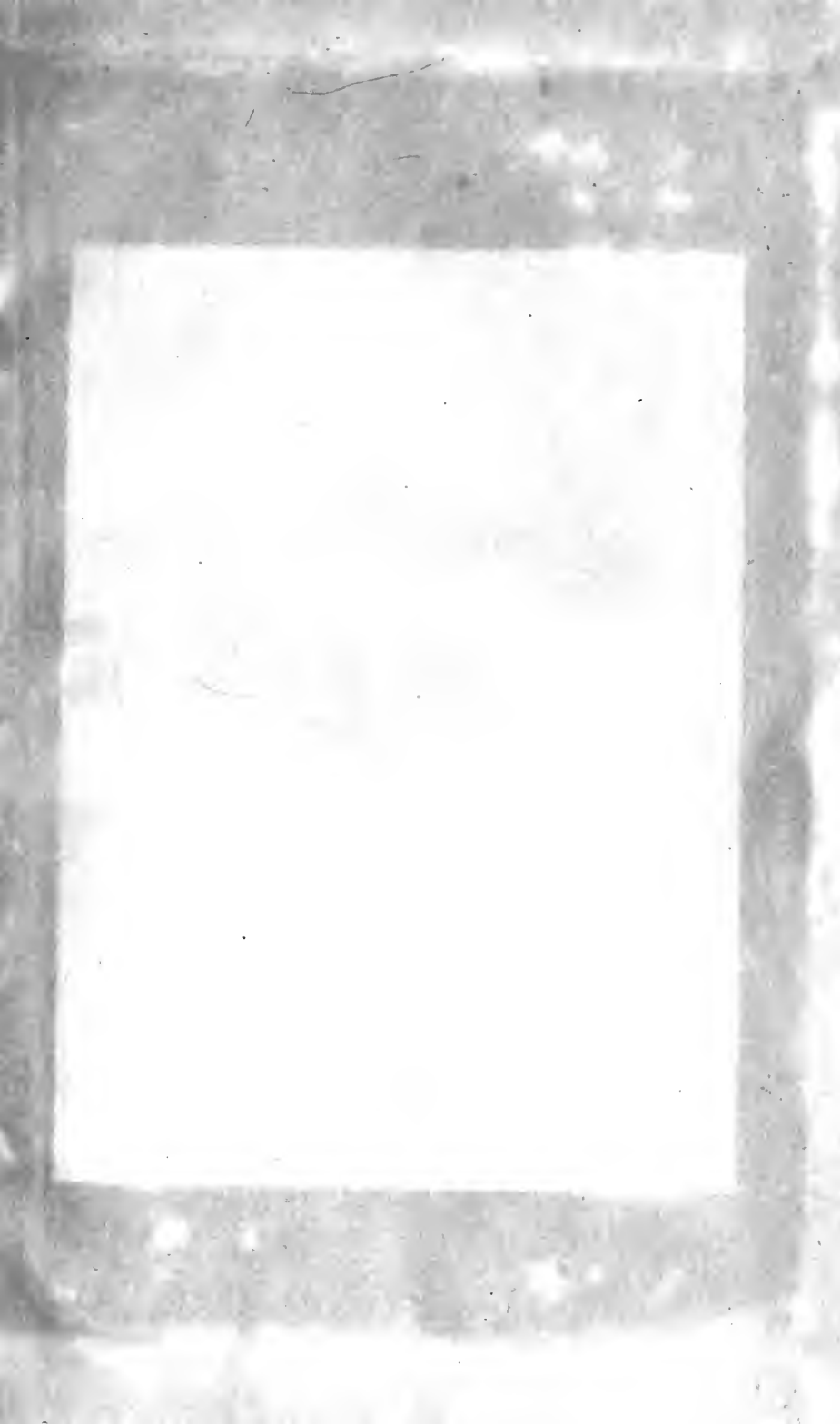
No. 21313

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315
No. 1149

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

APOSTLES

ON APPEAL.

C. SCHWARTING, Master and Claimant
of the German Bark "Robert Rickmers,"
her Tackle, Apparel and Furniture,

Appellant,

vs.

THE STIMSON MILL COMPANY
(A CORPORATION,)

Appellee.

FILED

DEC 24 1904

VOL. I.

(Pages 1 to 288, Inclusive.)

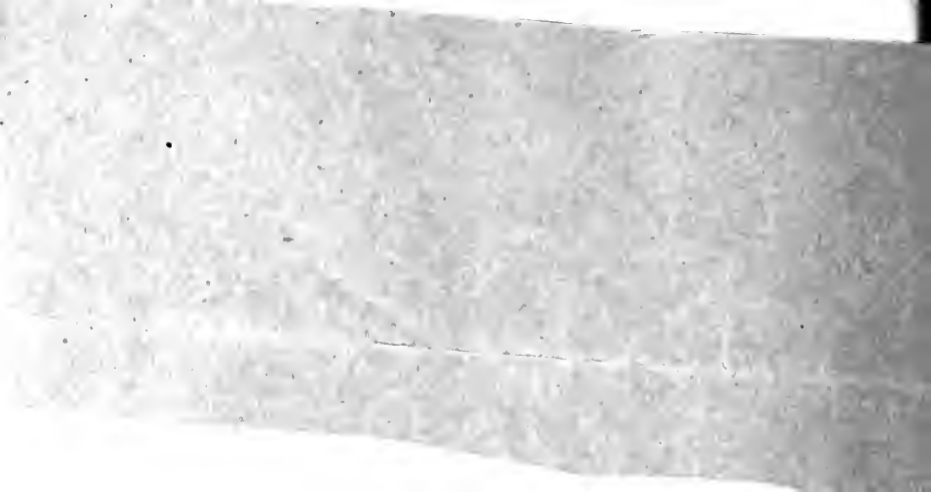
Upon Appeal from the United States District
Court for the District of Washington,
Western Division.

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Records of Circuit

Court of Appeals

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*District Court of the United States, District of Wash-
ington, Western Division.*

Parties.

Libelant: The Stimson Mill Company, a corporation, man-
aging owner of the schooner "Stimson," of Seattle,
Washington.

Respondent: The German bark "Robert Rickmers," her
tackle, apparel and furniture.

Claimant: C. Schwarting, as master and agent for Rick-
mers, Reismuchten, Rhederei & Schiffbau, Owners.

Surety: National Surety Company.

Proctors.

Messrs. Hughes, McMicken, Dovell & Ramsey, Bailey
Building, Seattle, Washington, for libelant.

Mr. James M. Ashton, Fidelity Building, Tacoma, Wash-
ington, for respondent and claimant.

Statement.

1902.

Jan. 28. Verified libel filed. Monition for attachment
of respondent issued, which said monition was
afterward, to wit, on January 30th, returned
and filed in court by the United States Mar-
shal with the following return of service there-
on: "In obedience to the within monition, I at-
tached the German bark 'Robert Rickmers,'

therein described, on the 28th day of January 1902, and have given notice to all persons claiming the same that this Court will, on the 12th day of February, 1902, proceed to the trial and condemnation thereof, should no claim be interposed for the same. C. W. Ide, U. S. Marshal, by I. S. Davisson, Deputy Marshal."

- Jan. 30. Claim of C. Schwarting as master and agent for Rickmers Reismuchten, Rhederei & Schiffbau, Owners. \$30,000 deposited in court in lieu of bond for release. Marshal directed to deliver custody of respondent to claimant.
- Jun. 17. Verified answer filed.
- 1903.
- Mar. 10. Deposit withdrawn by agreement, and bond in the sum of \$25,000 with National Surety Company as surety, substituted.
- Dec. 26. Amended answer filed.
- 1904.
- Apr. 1. Report of testimony taken before M. L. Clifford, United States Commissioner, filed.
- Apr. 6. Oral argument on merits before the Honorable C. H. Hanford, United States District Judge, at Tacoma.
- Jul. 22. Opinion of the Court filed awarding damages to libelant in the sum of \$18,680, with interest and costs.
- Aug. 12. Application of Claimant for rehearing filed.
- Nov. 2. Rehearing denied.
- Nov. 7. Decree in accordance with opinion entered.

- Nov. 12. Assignments of error filed and served. Notice of appeal filed and served. Citation issued and subsequently filed with acceptance of service thereof by proctors for Appellee.
- Nov. 17. Order allowing appeal, and order that stipulation in the sum of \$25,000, now on file, be considered as a supersedeas; that proceedings be stayed until the further order of the Appellate Court in the premises, and that the appellant be relieved from giving further bonds on appeal, except a stipulation for costs in the sum of \$250.
- Nov. 22. Bond for costs in the sum of \$250 filed with the approval of the District Judge, dated Nov. 17, 1904.
- Nov. 23. Notice of filing cost bond on appeal, with acceptance of service thereof, filed.

*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

IN ADMIRALTY.

<p>THE STIMSON MILL COMPANY (a Corporation), Libelant and Respondent, vs. C. SCHWARTING, Master of the Ger- man Bark "ROBERT RICKMERS," Claimant and Appellant.</p>	}	No. —.
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Stipulation as to Contents of Apostles on Appeal.

For the sake of brevity and to avoid unnecessary expense, it is hereby stipulated that the clerk of the Court in making up the apostles herein may omit from all pleadings, orders and proceedings (other than the libel and answer upon which the cause is heard) the title of the court and the number and title of the cause, and the words "In admiralty" where the same appear with such title.

Dated at Tacoma this 12th day of November, 1904.

JAMES M. ASHTON,

Proctor for Claimant and Appellant.

HUGHES, McMICKEN, DOVELL & RAMSEY,

Proctors for Libelant and Respondent on Appeal.

[Endorsed]: Filed in the U. S. District Court. Nov. 22, 1904. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

*In the District Court of the United States, for the District
of Washington, Western Division.*

IN ADMIRALTY.

THE STIMSON MILL COMPANY (a
Corporation), Managing Owner of the
Schooner "STIMSON" of Seattle,
Washington,

Libelant,

vs.

The German Bark "ROBERT RICK-
MERS," Her Tackle, Apparel, and
Furniture,

Respondent.

No. 364.

Libel.

To the Honorable C. H. HANFORD, Judge of the Above-
entitled Court:

The libel of The Stimson Mill Company, a corporation organized and existing under the laws of the State of Washington, and having its principal place of business at Seattle, Washington, managing owner of the four-masted schooner "Stimson" of Seattle, Washington, in its own behalf, and in behalf of the other owners of said schooner against the four-masted German bark "Robert Rickmers" of Bremerhaven, Germany, her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein in a cause of collision civil and maritime, alleges as follows:

I.

That the said libelant The Stimson Mill Company, a corporation as aforesaid, during all of the times herein mentioned was and now is the managing owner of the four-masted schooner "Stimson" of Seattle, Washington, and of her tackle, apparel and furniture, and which said schooner is of the length of about 185 feet, of the beam of about 40 feet and of the depth of about 14 feet, and of about 701 tons gross tonnage measurement, and of which during all of the times herein mentioned one C. Peterson was master and which said schooner "Stimson" is a new vessel of the value of about \$60,000 and is engaged in the transportation business upon the waters of the Pacific Ocean and at the time herein mentioned was under charter from the Stimson Mill Company to carry a cargo of lumber from the port of Ballard on Puget Sound to Redondo, California, and had aboard at the time of the collision hereinafter mentioned about 650,000 feet of lumber, being about three-quarters of a cargo, and which had been loaded at the port of Ballard in the District aforesaid.

II.

That during all of the times herein mentioned the said "Robert Rickmers" was and is a four-masted iron bark of Bremerhaven, Germany, and as this libelant is informed was and now is owned by Rickmers, Reismuhlen, Rhederei & Schiffbau, and of the length of about 279 feet and of the breadth of about 42 feet and of the depth of about 24 feet, and of 2277 tons gross tonnage measurement, and of the value of about ninety thousand dollars,

and at the time of the collision hereinafter mentioned said "Robert Rickmers" was bound to the port of Tacoma to load with a cargo of wheat.

III.

That at the time of the collision hereinafter mentioned, and about two weeks prior thereto, the said schooner "Stimson" was lying at anchor off the mouth of Shilshole Bay, near the port of Ballard in the district aforesaid, taking on cargo from lighters moored alongside, and that during all of the times herein mentioned said "Stimson" was properly and safely secured and anchored and in her usual place of anchorage, and at all the times herein mentioned was in the command of capable and skillful officers and had a full crew aboard, and carried the proper and regular riding light brightly burning, and at all of the times herein mentioned had a proper lookout.

IV.

That on the afternoon of the 25th day of December, 1901, the said "Robert Rickmers," while proceeding under tow to the port of Tacoma aforesaid, was taken by the tugboat towing the said bark to a point of anchorage under the lee of Magnolia Bluff, a distance of about a quarter of a mile southwesterly from where the said "Stimson" was anchored. That the said "Robert Rickmers" lay at anchorage aforesaid until about eleven o'clock at night, when the said bark, being insufficiently improperly and unskillfully anchored and moored, and with insufficient and defective cables, parted one of her anchor chains and dragged from her anchorage down

toward the fleet of vessels of which the "Stimson" formed one, narrowly missing the schooner "Corona," fouling the schooner "Mildred," and carrying away the bowsprit and headgear of the said schooner, and then striking said schooner "Stimson" with her port side on the bowsprit, carrying away her jib-boom, bowsprit, and all of her headgear and foretopmast, and then ranging alongside with her port side against the starboard side of said "Stimson," during which time said schooner "Stimson" held both vessels for a period of about fifteen minutes, when the combined weight of both vessels upon the anchor of the "Stimson" in the prevailing wind and sea caused the "Stimson's" anchor to drag, and the "Stimson" immediately paid out more chain, but when the weight of both vessels fetched up on the cable it carried away the windlass and said vessel's anchor chain then ran out to its full length and both of said vessels locked together, drifted in a northeasterly direction to a point off Richmond Beach in King County, in the District aforesaid, a distance of eight or nine miles, when the anchor of the "Stimson" brought up holding both vessels, the said bark "Rickmers" ran her anchor out and pulled away from the collision with said schooner.

V.

That during the collision herein described the said "Stimson" was damaged by the said "Rickmers" as follows: The jib boom and outer bobstay turnbuckle and oak martingale were broken and carried away; the foretopmast was carried away and the trestle trees broken;

as well as the cross trees and outrigger. The port fore-topmast backstay and jumperstay were broken, four shrouds starboard main rigging, topmast backstay, main royal stay from pole to foremasthead were carried away, as well as the four shrouds and topmast backstay on the starboard side of the mizzen mast, and the four shrouds and topmast backstay on the starboard side of the jiggermast was carried away, and both mizzen and jigger masts so badly chafed as to require new masts. On the starboard side, the after chain plate at the mainmast, and the 4th chain plate and topmast chain plate were bent and broken, and on the starboard side the forward chain plate and after or 4th chain plate and topmast chain plate were bent and broken on the starboard side of the jiggermast, as well as 14th rigging turnbuckles and 4 backstay turnbuckles; the windlass shaft five inches in diameter was broken, as well as the cogs, compressors and wild-cat, and shaft to messenger wheel was bent. The starboard anchor stock was bent and the forelock broken. The topping lift falls on the fore, main and mizzen masts were carried away, as were also the jib topsail and flying jib halyards and the mizzen and spanker peak halyards and purchase for same. Two gang planks, tackles, and a 36 foot gangway plank were carried away as were the mizzen and jigger starboard deck load pin rails, and a starboard mail rail broken from Scarph abaft rigging, mizzen aft, and the chock on the starboard side of poop and 36 feet of the rail broken and carried away; also two ten-inch dead lights and stanchions on the starboard side of fly rail

on the poop, and the teak after companionway, deck iron for stovepipe were broken and carried away. The planking on the starboard side after the jigger mast was badly chafed and injured, as well as planking on the port side abaft the jigger rigging which was caused by collision with the lighter on the port side and the rider keelson split at the steps of the mizzen mast and jigger mast, and divers other injuries and damages caused to the said schooner, her tackle and apparel.

VI.

That the said collision was not caused by any fault or omission on the part of the officers or crew of the said schooner "Stimson," but was solely caused by the improper and unskillful management and handling of the said bark by those having her in charge, and by her failure to be properly anchored, and by her failure to have sound and safe ground tackle, and also by her failure to avoid a collision with said schooner when she found that she was dragging toward said schooner, and by her failure to clear herself from said schooner immediately after the collision; but, on the contrary, holding on to said schooner during the time aforesaid, amounting to upwards of an hour to save herself from drifting ashore as she would surely have done in the prevailing wind and weather, but for being fouled with the "Stimson," and depending upon the ground tackle of the latter to prevent her drifting on a lee shore.

VII.

That by reason of the collision aforesaid, the said "Stimson" has sustained damages for the necessary repairs, for her loss of time, that has been required and will be required in the unloading and reloading of said cargo, in the making of repairs, for expenses of tow-boats, lighters and the services of the steamer "Rapid Transit" in securing her anchor, for the expenses of her master and crew, and for other expenses and damages incident to said collision in the sum of twenty-two thousand five hundred dollars, all of which said damages were occasioned by the neglect, want of skill and improper conduct of the persons in charge of the said bark "Robert Rickmers," and by the said bark being insufficiently and improperly equipped with anchors and cables, and not by or through any fault or improper conduct of the persons on board the said "Stimson," or her master, officers or crew.

VIII.

That since the said collision, this libelant has applied to the master and representatives of the said "Robert Rickmers" for an adjustment of the said damages, requesting them to settle with this libelant therefor, but they have refused to pay the same, or any part thereof.

IX.

That the said bark "Robert Rickmers" is now lying in the port of Tacoma in the district aforesaid, and within the jurisdiction of this Court.

X.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore said libelant prays that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against said bark "Robert Rickmers," her tackle, apparel and furniture, and that all persons having any interest herein may be cited to appear and answer on oath all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree the payment of the damages as aforesaid, and that the said "Robert Rickmers" may be condemned and sold to pay the same, and that the said libelant may have such other and further relief as in law and justice it may be entitled to receive.

STRUVE, ALLEN, HUGHES & McMICKEN,

Proctors for Libelant.

United States of America, }
 District of Washington, } ss.
 County of King. }

F. S. Stimson, being first duly sworn, on oath deposes and says: That he is the secretary of the Stimson Mill Company the libelant named in the foregoing libel; that he has read the foregoing libel, knows the contents thereof, and that the statements therein contained are true.

F. S. STIMSON.

Subscribed and sworn to before me this 27th day of January, 1902.

H. J. RAMSEY,

Notary Public in and for the State of Washington, Residing at Seattle.

[Endorsed]: Filed in the U. S. District Court. Jan. 28, 1902. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

In the United States District Court for the District of Washington, Western Division.

IN ADMIRALTY.

STIMSON MILL COMPANY (a Corporation), Managing Owner of the Schooner "STIMSON,"

Libelant,

vs.

The German Bark "ROBERT RICKMERS," Her Tackle, Apparel and Furniture,

Respondent,

and

C. SCHWARTING, Master,

Claimant.

No. 364.

Amended Answer of Respondent and Claimant.

The amended answer of the respondent and the claimant as the master of the bark and as agent of Rickmers-Reismuehlen-Rherered & Schiffau, A. G., the owners of

the bark, intervening for his interest and the interest of the owners to the libel of the Stimson Mill Company, a corporation, managing owner of the schooner "Stimson" alleges and propounds as follows:

First.—In answer to the first paragraph of the libel, the respondent and the claimant say that they have no sufficient information as to the matters alleged therein and therefore deny the same.

Second.—In answer to the second paragraph of the libel, the respondent and the claimant admit the truth of the allegations therein save and except the allegation that the "Rickmers" is worth the sum of ninety thousand dollars (\$90,000), and as to that they say that the bark is worth not over the sum of seventy-five thousand dollars (\$75,000).

Third.—In answer to the third paragraph of the libel, the respondent and the claimant say that they have no sufficient information as to the matters herein alleged and therefore deny the same save and except the allegation that at all the times therein mentioned, the "Stimson" had a proper lookout, and as to that they say that at the time of the collision alleged in the libel there was not a proper lookout and watch kept on the "Stimson" but that the fact is that the watch and lookout, if any there was, was negligent and careless.

Fourth.—In answer to the fourth paragraph of the libel, the respondent and claimant say that it is true that the "Rickmers," while proceeding up sound to Tacoma, under tow, was taken by the towboat to an anchorage under the lee of Magnolia Bluff, and that she lay in

safety at her anchorage until about eleven o'clock P. M., when she dragged her anchors and fouled the schooner "Mildred," and inflicted the damage alleged, and afterward came into collision with the "Stimson"; that is true that the vessels were in collision for some time, and that for a space of time the vessels hung by the "Stimson's" anchor; that thereafter both vessels dragged to leeward, and that the "Stimson" thereupon payed out more chain until her cable chain had run out its full length, and that the "Stimson's" windlass was carried away; but respondent and claimant deny that the distance from the "Rickmers" to the "Stimson" was about a quarter of a mile, and say that the distance was not less than a half mile, and that the anchorage of the "Rickmers" was nearly due south of the "Stimson" by magnetic compass bearing. Further answering the fourth paragraph of the libel, the claimant and respondent say there were but three vessels other than the "Rickmers" lying at anchor in Shilshoal Bay when the "Rickmers" came to anchor, and deny that she was improperly, insufficiently and unskillfully anchored and moored, and deny that her cables were insufficient and defective, and say that the "Rickmers" was anchored in a skillful and seamanlike manner, and that her anchors, chains, cables, and ground tackle generally, were of good and sufficient quality. Further answering the fourth paragraph of the libel, the respondent and claimant deny that after the collision of the "Rickmers" and the "Stimson," and after the vessels had dragged together for some distance as aforesaid, that both vessels came

up and held on the "Stimson's" ground tackle alone as alleged, and say that the fact is that the vessels broke apart while still drifting, and that the "Stimson" brought up on her own anchor, and that the "Rickmers" drifted by her, and afterward brought up on her ground tackle. Further answering the fourth paragraph of the libel, the respondent and claimant admit that the "Stimson" received injuries because of the collision, but further say that they have no sufficient information as to the extent of the injuries so received, and therefore deny the allegations of the libel as to the extent thereof.

Fifth.—In answer to the fifth paragraph of the libel, the respondent and claimant say that they have no sufficient information as to the extent of the injuries alleged therein to have been received in the collision, and therefore deny the same.

Sixth.—In answer to the sixth paragraph of the libel, the respondent and the claimant deny that the collision was not caused by any fault or omission on the part of the officers or crew of the "Stimson," and assert the fact to be that the cause of the collision in whole or in part was the neglect of the "Stimson" to have and to keep a proper lookout and watch, and that if a proper lookout and watch had been kept by her, the members of her crew and her officers would have had warning and ample time to have avoided the collision by taking proper and seamanlike steps to avoid the same. Further answering the sixth paragraph of the libel, the respondent and claimant deny that the collision was caused in whole or in part by the improper and unskillful hand-

ling of the "Rickmers," or by her failure to have sound and sufficient ground tackle, or by her failure to avoid a collision when she found that she was dragging toward the "Stimson," or by her failure to clear herself from the "Stimson" immediately after the collision, but on the contrary assert the fact to be that the "Rickmers" was fully and completely equipped with safe and sufficient ground tackle, and that the cause of her dragging her anchors was the force and fury of the elements; that both before and after she dragged she was handled in a skillful and seamanlike manner, and that she did all in her power to avoid the collision, and that after coming into collision, she took every precaution within her power to avoid and minimize the injury to the "Stimson" as well as to herself.

Seventh.—In answer to the seventh paragraph of the libel, respondent and claimant say that they have no sufficient information as to the facts alleged therein, and therefore deny the same, save and except the allegations that the damage incurred by the "Stimson" were occasioned by the neglect, want of skill and improper conduct of the persons in charge of the "Rickmers," and by the barks being insufficiently and improperly equipped with anchors and cables, and as to these allegations the respondent and claimant say that the same are not true, but that the fact is as herebefore alleged that the "Rickmers" was fully and properly equipped with adequate and sufficient anchors, chains, cable and ground tackle of every description, and that her officers and crew were not guilty of any negligent or unseaman-

like conduct in the management of the bark. Further answering the seventh paragraph of the libel, the respondent and the claimant say that it is not true that the "Stimson" was not at fault in the matters which caused the collision, and further say that the "Stimson" was in fault as hereinbefore in this answer alleged.

Eighth.—In answer to the eighth paragraph of the libel, the respondent and the claimant say that the matters therein alleged are true.

Ninth.—In answer to the ninth paragraph of the libel, the respondent and the claimant say that the matters therein alleged are true.

Tenth.—In answer to the *ninth* paragraph of the libel, the respondent and the claimant say that the matters therein alleged are not true, save and except the allegation that the matter is within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court, and as to these allegations the respondent and the claimant admit that they are true.

Further answering the libel herein the respondent and the claimant aver as follows:

First.—That the bark "Robert Rickmers" inward bound arrived at Port Dungeness on December 24th, 1901, and came to anchor at a point between Port Dungeness and Port Angeles until 11:30 P. M. of that day, when she weighed her anchor and started up sound for Tacoma under tow of the tugboat "Tacoma," and made Port Townsend at 3:30 A. M. of December 25th; that she left Port Townsend at 9:00 A. M. of the 25th and proceeded up sound under tow of the "Tacoma";

that she was in ballast, and as the breeze freshened she was taken at about 4 P. M. to a temporary anchorage in Shilshoal Bay at a point about three-quarters of a mile (nautical) distant from and bearing N. 33 E. (true) from Westpoint light; that the wind at this time was from the westerly quarter and was no more than a fresh breeze; that there was lying at anchor in Shilshoal Bay at this time three schooners, and that the "Richmers" came to anchor at a point about due south (magnetic) and distant not less than a half mile from the "Stimson"; that in coming to anchor the port anchor was dropped, and in so doing, the block of the port compressor was carried away, and the bark sagged off to leeward and narrowly escaped a collision with the schooner "Corona"; that the bark was hauled back to her anchorage by the tug and that both her anchors were dropped, and that thereafter she lay safely at her anchorage until after 10:00 P. M., having 40 fathoms of chain on her port anchor, the chain of which was stoppered to the foremast by a relieving tackle, and 30 fathoms of chain on her starboard anchor, which was all she could safely allow without fouling either the "Mildred" or the "Corona"; that about 10 P. M. the relieving tackle on the port chain carried away, and the wind having veered to the southward and increased to the force of a hurricane, the ship dragged her anchors and came into collision with the schooner "Mildred," carrying away the "Mildred's" jib-boom, and inflicting other injuries to her; that she swung clear after a while from the "Mildred," and after not less than a half hour

elapsed, came into collision with the "Stimson," inflicting severe injuries upon her and receiving severe injuries herself; that she remained for some time in collision with the "Stimson" during which time the "Stimson's" anchor dragged, and both vessels locked together went to leeward; that after dragging for some distance the vessels broke apart and each brought up on its own ground tackle.

Second.—The respondent and claimant further allege that the master of the "Rickmers," the claimant herein, was on his first voyage to Puget Sound, and was a stranger in its ports and waters; that it is the custom of Puget Sound ports that tugboats in making contracts of towage inward and outward assume also the duties of pilotage, and that the rate of compensation paid to them is on this basis; that the master of the tugboat "Tacoma" was, at the time in question, a duly licensed pilot for the waters of Puget Sound; that as such pilot and master he chose the anchorage for the "Rickmers" and designated the spot in which she should lie; that there was nothing in the surroundings of the anchorage to indicate to the master of the "Rickmers" that the place so chosen was not a proper anchorage, and her master being a stranger, as aforesaid, relied upon the master and pilot of the tug in choosing the anchorage; that the "Rickmers" was fully found and seaworthy in every respect, and that her anchors, chains, cables and ground tackle were adequate, staunch, and sound in every particular, so far as her officers and crew could know; that the cause of the carrying away of her port

compressor block was and is now unknown to the respondents, but they verily believe the same to have been caused by some hidden and latent defect, if defect there was, but they say that not now or at any time was any defect known to them, although the compressor and the ground tackle generally had been fully and carefully inspected shortly before the accident aforesaid.

Third.—That the respondent and the claimant further allege that after the port compressor block carried away as aforesaid that the bark and her officers and crew took all and every proper and seamanlike steps to secure the same and to make the anchorage of the bark safe and secure as far as in their power lay; that the wind having veered to the southward and having increased to hurricane force, the relieving tackle on the port chain having carried away, the ship began to drag, and that thereupon the bark and her officers and crew took every and all proper and seamanlike precautions to protect the ship from injury to herself, and to other shipping, and that among other steps taken the starboard chain was payed out as rapidly as possible until over ninety fathoms had been allowed to go outboard, and the proponents further allege that the reason why the bark dragged her anchors was the fury and force of the elements, and was not due to any negligence or want of nautical skill on the part of the bark or her officers and crew.

Fourth.—The respondent and claimant further allege that from the time the bark began to drag her anchors, as aforesaid, and particularly from the time she was

in collision with the schooner "Mildred" as aforesaid, not less than a full half hour elapsed; that the night was free from fog, and although the weather was tempestuous, surrounding objects, and particularly the lights of vessels could be seen clearly; that if a proper lookout and watch had been kept on the "Stimson," the fact that the "Rickmers" was dragging down on her would have been seen easily, and that if it were so seen it was within the power of the "Stimson," by paying out more chain so as to have the longest possible scope to have avoided the collision, and that, if the paying out of the chain would not have accomplished this result that it would have been accomplished by properly maneuvering the helm of the "Stimson" so as to sheer her from one side or another, and that the circumstances were such that the "Stimson" might well have set a close-reefed forestaysail to have assisted in the maneuver; but proponents assert the fact to be that no proper watch and lookout was kept by the "Stimson," and that no warning of the impending collision was given to her officers until very shortly before it occurred, so that the officers had no time to direct that the proper and seamanlike steps be taken to avoid the collision.

Fifth.—The respondent and claimant further allege that because of the fault of the "Stimson," her officers and crew, the "Rickmers" suffered severe damage to her hull and rigging, her tackle, apparel and furniture, and that the damages so received amount to not less than the sum of seven thousand five hundred dollars (\$7,500).

[Endorsed]: Filed in the U. S. District Court. Dec. 26, 1903. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

[Title of Court and Cause.]

Transcript of Testimony.

Struve, Allen, Hubhes & McMicken, appearing as proctors on behalf of the libelant, and J. M. Ashton, Esq., and W. L. Sachse, Esq., appearing as proctors on behalf of the claimants and owners of the ship "Robert Rickmers" intending hereafter to make claim and answer herein, it is hereby stipulated and agreed that the testimony of the master and crew of the "Robert Rickmers" may be taken at this time before the Hon. M. L. Clifford, Commissioner, to be read in evidence on behalf of the claimant and respondent; the usual and ordinary notice of the time of taking said testimony being hereby waived, and the signatures of the witnesses being also waived.

Before taking the testimony, it is also understood between the parties hereto that the libelant intends to amend its libel herein so as to claim in addition to the amounts already set out in the libel, a further sum as salvage against the bark "Robert Rickmers," her tackle and apparel.

It is further agreed that for the purpose of facilitating the bark in her departure, she being now ready for sea, that libelant consents that either a bond of a surety company, or an approved certified check, for the sum of

(Testimony of C. Schwarting.)

\$30,000, may be given by the claimant of the "Robert Rickmers," such bond or certified check to stand in lieu of the ship, and be subject to and conditioned for the payment of any judgment rendered herein.

C. SCHWARTING, being called as a witness, being first duly sworn, testified as follows:

(Examination in Chief by Mr. SACHSE.)

Q. What is your name?

A. C. Schwarting.

Q. Were you the master of the "Robert Rickmers" on the 24th and 25th of December last?

A. Yes, sir.

Q. And have you been master of that ship since that time?

A. Yes, sir.

Q. How long have you been a captain?

A. I have been two years on the "Rickmers."

Q. How long have you been a captain?

A. I have been a captain for thirty years.

Q. How old are you now?

A. Sixty-six, nearly.

Q. How long have you followed the sea?

A. I was to sea nearly forty-six years.

Q. How large a ship is the "Rickmers"?

A. Two thousand one hundred and seventy-four net tons.

Q. How old a ship is it?

A. Twelve years.

(Testimony of C. Schwarting.)

Q. When did you come to the Sound in this ship?

A. I came in the 24th.

Q. Where were you on the 24th of December?

A. Well, I anchored outside here, between Angelus and Dungeness.

Q. What happened then, when you were at anchor there, anything? A. No, sir.

Q. When did the tug pick you up?

A. The "Tacoma" picked me up about 11 o'clock.

Q. In the night or morning?

A. The night.

Q. Of December 24th? A. Yes, sir.

Q. Where did he take you to?

A. To Port Townsend.

Q. How was the weather then, Captain?

A. The weather was good.

Q. What arrangement did you have with the tug company about towing you?

A. Out and in to sea, twenty miles, off Flattery, \$700 and inside \$400.

Q. Did the tug have any trouble handling you or bringing you down? A. No, sir.

Q. Where did the tug take you from Port Townsend?

A. He had to take us to Tacoma.

Q. Where did he take you?

A. He anchored us there.

Q. Where did the tug take you to—Salmon Bay?

A. Yes; that time we were at anchor we were in Salmon Bay.

(Testimony of C. Schwarting.)

Q. What time did you leave?

A. A little after four, or four o'clock.

Q. On what day? A. The 25th.

Q. In the afternoon or morning?

A. Afternoon.

Q. What did you do after you arrived there?

A. We anchored.

Q. How many anchors? A. First one.

Q. Which anchor? A. The port anchor.

Q. Did anything happen to you then?

A. We were drifting with one anchor, and we had to let go the second anchor.

Q. Did the tugboat take hold of you again and put you back? A. Yes.

Q. That was the tug "Tacoma"?

A. Yes, sir.

Q. Owned by what company?

A. The Puget Sound Tugboat Company, I think.

Q. In how many fathoms of water did he anchor you first?

A. Midships, fourteen fathoms, maybe a little less forward.

Q. After you anchored the second time, how many anchors did you have out? A. Two.

Q. At what time was it you anchored the second time? A. Well, about half an hour later.

Q. That would be at what time, about?

A. It must be nearly a quarter to five or half-past four, I don't know exactly. I didn't look at the watch.

(Testimony of C. Schwarting.)

Q. Did the tug stay there?

A. No, the tug left us. He went to telephone for another one.

Q. Did the other tug come?

A. No, not in the night.

Q. When did you next see the tug?

A. I saw it the next morning. It came alongside about nine o'clock:

Q. Did the captain of the tug say anything to you then?

A. No, not much, only he wanted to haul the vessel by the tug "Tyee."

Q. You have looked at chart of Seattle Harbor No. 6445? A. Yes, sir.

Q. Have you located the position of your ship marked with a cross, opposite which is the letter "R" on this chart? A. Yes, sir.

Q. And also you have located the position of the schooner "Mildred," in the same way with the letter "N"? A. Yes, sir.

Q. And also the position of the schooner "Corona," with the letter "C"?

A. Yes, sir.

Q. And the position of the schooner "Stimson" in the same way with the letter "S"?

A. Yes, sir.

Q. All with red pencil? A. Yes, sir.

Mr. SACHSE.—We offer that chart in evidence.

(Testimony of C. Schwarting.)

Mr. HUGHES.—It is understood that this chart may go in evidence and be used by the witnesses on both sides, it being Libelant's Exhibit No. 1 and used by agreement by the plaintiffs.

Q. You have looked at Chart No. 6450 showing Puget Sound from Admiralty Inlet to Seattle?

A. Yes, sir.

Q. You have indicated on that chart by a cross under the letter "R" the place to which the ship "Rickmers" drifted on the night of December 25th?

A. Yes, sir.

Mr. HUGHES.—It is admitted between counsel that the location of the schooner "Stimson," after she brought to upon her anchors, is noted upon this chart by the letter "S" in red pencil and that the position of the bark "Robert Rickmers" is located on this chart by the letter "R." The curved line upon the shore represents Richmond Beach. This points the officers of both vessels agree are, approximately the correct locations at which the two ships brought up at anchor after drifting from their original positions in Shilshoal Bay.

Mr. SACHSE.—We offer this chart in evidence as an exhibit.

(Chart received in evidence and marked as Respondent's Exhibit No. 1.)

Q. What, if anything, happened to your ship after you anchored the second time?

A. She lay steady the first time.

(Testimony of C. Schwarting.)

Q. How long did she lie at anchor?

A. It was about half-past four or a quarter to five when she let go of her second anchor.

Q. And then what?

A. Then she lay steady and then her compressor was broken on the port side, and we put a big tackle on the chain.

Q. What, if anything happened to the ship after that?

A. You see that the tackle hook broke; a hook like this, and then some chain slipped out about five or six fathoms.

Q. How big was that hook on the tackle?

A. About like this; we have got the hook.

Q. In inches, I mean?

A. A little more than two inches, or two inches.

Q. What do you mean by the compressor breaking; can you explain that a little more fully? Explain first, what is a compressor?

A. The compressor is what we got on the chain to secure that together, and keep the chains steady so they can't slip.

Q. What chains do you have reference to?

A. The anchor chain.

Q. What is the size of that chain, do you know?

A. We took the measure—about $2\frac{1}{4}$.

Q. In circumference?

A. Yes, $2\frac{1}{8}$ or $2\frac{1}{4}$ —thickness.

Q. What is the length of these links?

(Testimony of C. Schwarting.)

A. Twelve and one-half inches.

Q. Was it what is called a studded chain?

A. Yes, sir.

Q. What is the size of these studs?

A. About two inches; about 2 or 2 $\frac{1}{4}$, I don't know. I forget that.

Q. What was the size or weight of your anchors?

A. This anchor that we lost was 3600 without the stock, thirty-six hundred-weight.

Q. One hundred and twelve pounds to the hundred weight? A. Yes, sir.

Q. Did you see any ships located near you there when you were at anchor?

A. Yes, I saw those schooners.

Q. That you have identified on this plat?

A. Yes, sir.

Q. How was the weather at the time you began drifting?

A. There was a little more breeze than the time we let go of the anchor, but not the first time; not when we were laying with one anchor.

Q. You didn't have as much breeze?

A. No, there was not so much breeze that time when we anchored with one anchor.

Q. How was it when you anchored with two anchors?

A. We anchored with two anchors, for one wouldn't hold us. The wind went right around the bluff.

(Testimony of C. Schwarting.)

Q. How was the weather? Was it good weather, or strong wind, or how?

A. The wind wasn't very strong, but we call it a fresh.

Q. What time was that?

A. The same time we were anchored.

Q. How was it after that?

A. It commenced a little more to blowing.

Q. Then what happened?

A. About half an hour after that we let go the second anchor. We pulled him up first to the same place and heaved the slack of chain in. We pulled in the same position and the same place, and we lay over that side and one anchor was here and one there.

Q. How much chain did you have out the first time?

A. Forty fathoms on the port.

Q. And how many fathoms on the starboard?

A. There was thirty.

Q. What happened to your ship after that, when you had both anchors out?

A. It lay steady that time, up to the time that it drifted.

Q. What time did you begin drifting?

A. It must have been about ten o'clock.

Q. About ten o'clock at night?

A. Yes, sir.

Q. You lay steady until ten o'clock?

A. Yes; only as I told you before the compressor was split up and we put some tackle on the port side.

(Testimony of C. Schwarting.)

Q. Was the compressor split up before ten o'clock?

A. Yes, before ten o'clock. Both anchors were down.

Q. Then what happened to you after that, when you began drifting; do you understand?

A. No, after 10 o'clock, we drift.

Q. What caused you to drift? How did it come that you began drifting?

A. You see the anchors didn't catch good, I think.

Q. The anchors didn't catch good?

A. No, or there wasn't holding ground, I think, and the ground goes this way and it slips right down.

Q. It slips away from shore? A. Yes, sir.

Q. Had you ever been anchored there before in that bay?

A. Never was here. I didn't want to anchor there.

Q. Well, what happened to your ship then after you began drifting?

A. Why, we came in collision with one schooner. Took the jib-boom away.

Q. Was that the "Mildred"?

A. I don't know the name, it was night. I didn't see the name.

Q. Was it the one you marked with the letter "M" there? A. Yes, sir.

Q. How far was she from you when you began drifting? A. Not so very far.

Q. Well, in ship's lengths?

A. Yes, about that.

(Testimony of C. Schwarting.)

Q. One ship's length?

A. Yes, we couldn't slack more chain.

Q. Why couldn't you slack more chain?

A. We had no room.

Q. Were you too near to the other ship?

A. Yes, and we had no room. We were too near the other ships.

Q. Well, now, how was the wind and weather at that time when you began drifting; the second time?

A. It blew out again.

Q. And what was the result of that with your ship? What else happened to your ship?

A. We cleared the first schooner and drifted away further.

Q. And then what happened?

A. Then we ran against the "Stimson," and slacked some chain first, and cleared the first schooner.

Q. Did it do any damage to you?

A. Yes, it chafed off the sails on the jib-boom and the lower topsail flew away afterwards.

Q. What other damage, if any?

A. On the bulwarks, and it chafed the foresail and the upper topsail.

Q. How much do you estimate the damage to the "Rickmers" in money?

Mr. HUGHES.—Objected to as incompetent, for the reason the witness has not shown his ability to estimate nor sufficiently described the damages to constitute a

(Testimony of C. Schwarting.)

proper basis of measure, and we object to it as immaterial.

Q. What is your estimate as to the damages?

A. The only damage, so far, is about \$5,000.

Q. Do you know what it would cost to make repairs to the "Rickmers"?

Mr. HUGHES.—We make the same objection to this question as the one last interposed, and also object on the ground that the witness has not shown himself competent to give and estimate.

Q. Do you know how much it would cost to make repairs?

Same objection.

Q. Have you knowledge of your own sufficient upon which to make an estimate? A. Yes, sir.

Q. What would you say the damage to the "Rickmers" was?

Same objection.

A. I would say about \$5,000 and then there are some odd things to go on it. It kept me a long time here.

Q. I will ask you, Captain, if you know whether or not the ship "Rickmers" was recently overhauled, and if so, when?

Same objection.

A. She was overhauled in hull last February, 1901.

Q. She was overhauled in hull in February, 1901?

A. Yes, the 12th of February she was in drydock.

Q. Captain, I hand you a paper, and ask you to state

(Testimony of C. Schwarting.)

whether that is a certificate of classification of the "Robert Rickmers," of the port of Veritas?

A. Yes, sir.

Q. And which is in your possession as master at the present time? A. Yes, sir.

Mr. SACHSE.—We offer a copy of this certificate in evidence and ask that the reporter make a copy of it and return the original to the captain.

Mr. HUGHES.—We object to the document itself as incompetent and immaterial. We have no objection to the use of a copy which would not be urged against the original.

(Certificate marked as Claimant's Exhibit No. 2.)

Q. I show you another paper now, Captain, with a pencil drawing on it, and ask you to state, if you know, what it is? A. Yes, I know what it is.

Q. What is this drawing?

A. That is the compress of the anchor chain.

Q. Captain, this first figure, which I will mark No. 1 is an illustration of the compressor, and a section of the anchor chain showing method of operation, is it, do you understand?

A. No, I don't know what operation is.

Q. Explain what this is?

A. You have got to let go of the anchor and the chain is laying this way. We have to secure this up, and this goes right on this length; secure it tight up so

(Testimony of C. Schwarting.)

it can't move. (Here the witness points to the semi-circular figure representing the iron jaw of the compressor, securing it up against the link shown in the diagram—the flat links.)

Q. I will mark on this drawing with the letter "A" and ask you to state whether these things which I have marked with "A" are the iron jaws which hold the chain.

A. Yes, that's right.

Q. The other dark showing on this plat is of what, wood or iron? That I have marked with the letter "B."

A. The dark is iron and the light is wood. Green, hard wood.

Q. When you arrived near the "Stimson," were you on the deck of the "Robert Rickmers"?

A. Yes, sir.

Q. Was anything said to the people?

A. We sung out to the "Stimson" to slack chain.

Q. What did they say, if anything?

A. "Can't slack no more." I didn't sing out to the "Stimson," the mate sang out to them.

Q. Captain, what in your opinion could the "Stimson" have done, if anything, to avoid your running into her at that time?

A. They had to slack chain, or put the helm to starboard; that's what he could do.

Q. If he had put the helm to starboard, do you think the collision would have occurred?

A. I don't think so.

(Testimony of C. Schwarting.)

Q. Did anyone put the helm on the "Stimson"?

A. I don't know. I didn't hear that, but she must know that herself.

Q. Where did you strike the "Stimson"; come in collision with her?

A. On the jib boom. And on the starboard side of the bow.

Q. Captain, that compressor on your ship, how does that compare with the compressors on other ships of similar size and capacity, as to strength and durability?

A. I don't understand.

Q. What I am getting at is this: The compressor on your ship was of the kind that is usually used on ships of that size?

A. Yes, sir.

Q. Was it in good order?

A. This was in good order, yes. We are laying with the same anchor chain at Dungeness; with the same anchor.

Q. Was the machinery connected with the running out of the anchor chains in good order, if you know?

A. Yes, sir.

Q. How do you know?

A. We take it off every voyage and about three or four days before coming into port, we put it on again.

Q. When was the last examination made of this compressor, and the anchor chains, before this accident. When was it examined last; looked over?

A. I don't know. It is in the book in the vessel.

(Testimony of C. Schwarting.)

They are examined. The last examination on the last voyage from Nagasaki to here. We cleaned it all and put it on three or four days before we got to port.

Q. I don't mean examinations that you have in your book or anything like that, but what examinations were made on the ship?

A. Three or four days before coming to port we took it off and cleaned it up.

Q. When it was taken off was it in good order?

A. Yes, when we cleaned it and when we put it on it was in good order.

Q. You mean by that the anchor chain, the windlass and the compressor. Everything was examined, was it?

A. Yes, sir.

Q. And that was three or four days before you arrived at Salmon Bay?

A. No, before we got into Flattery.

Q. When you began drifting the first time, Captain, do you know of any other schooner being there which got out of the way when you began drifting the first time?

A. The first time, with one anchor, you mean?

Q. Yes, was there any other schooner there at that time that you came near going into?

A. Yes, sir.

Q. Did you get out of the way? A. Yes, sir.

Q. What schooner was that, the "Corona"?

A. No, it was the other one, laying on the port side of us, the "Mildred."

(Testimony of C. Schwarting.)

Q. It was the "Corona," wasn't it, that you have reference to?

A. That vessel that was lying on the port side.

Cross-examination.

(By Mr. HUGHES.)

Q. Captain, you were bound to Puget Sound from that port? A. Nagasaki.

Q. Were you laden or in ballast?

A. Ballast.

Q. Where did you get your tug?

A. Got it there where we were anchored.

Q. At Dungeness?

A. Between Dungeness and Angelus.

Q. How far were you beyond the Dungeness Spit; how far west were you anchored?

A. I can't say that.

Q. How much water did you have?

A. Between 18 and 20 fathoms; or 15 to 20.

Q. About how near do you think you were to the Spit?

A. What do you call the Spit?

Q. The Spit is the sand point that stands out.

A. Point I understand better than Spit.

Q. The Spit is the sand point that extends out.

A. That is the beach, we call it.

Q. How near were you to the beach?

A. I can't say.

Q. About?

(Testimony of C. Schwarting.)

A. I wasn't so close on as the time the anchor caught the ground here at Shilshoal Bay.

Q. About how near were you?

A. About half a mile.

Q. About half a mile from the beach at Dungeness Spit?

A. No, Dungeness Spit is this way and the coast is here. We were over from Dungeness. We were nearly in the middle.

Q. From Angelus to Dungeness?

A. Yes, sir.

Q. And about half a mile off shore?

A. Yes, sir.

Q. What anchors did you put out there?

A. The port.

Q. Just one anchor, the port anchor?

A. Yes, sir.

Q. Were you on deck the time you came to anchor there? A. Yes, sir.

Q. You gave the orders to come to anchor there?

A. I did.

Q. Who put out the anchor. Who had charge of the letting go of the anchor? A. The mate.

Q. How much chain did you put out there?

A. Sixty fathoms in all.

Q. You were sailing in up to that point with your own sails, were you? A. Yes, sir.

Q. How much of your sails had you taken in when you let go of the anchor?

(Testimony of C. Schwarting.)

A. I don't know how much. We drew up the lower sails and then we heaved to. We sailed with the top sails on and the jibs on.

Q. About how much of a breeze was blowing at that time?

A. There wasn't so very much of a breeze. A fresh breeze, we call it.

Q. About how many knots an hour would you call it?

A. If you sail in small water here it is more knots, and if you sail on the sea, against the sea you don't run so much.

Q. What I want to get at is how many knots an hour do you think the wind was blowing; seven or eight or ten knots? A. No, not that much.

Q. How much? A. Six to seven.

Q. Which way was the wind from?

A. The wind was from the west.

Q. Blowing the way you were going, up the Strait?

A. Yes, sir.

Q. You had a fair wind coming up?

A. Yes, sir.

Q. Did the ship haul up hard on the anchor when the anchor caught?

A. No, not so very hard.

Q. Did it have any trouble in holding—did it drag any? A. No.

Q. Do you know what kind of anchor ground you had there? A. No.

(Testimony of C. Schwarting.)

Q. Do you know whether it was rocky bottom?

A. No, I don't know, it is not on the map.

Q. How did you come to anchor at that place?

A. Well, you see sometimes we get a little wind from shore, and sometimes we have to beat it up, and sometimes there is a dead calm.

Q. How did you come to drop your anchor where you did?

A. I didn't want to go any further.

Q. Were you afraid you might go ashore?

A. You see I was coming in here the first time.

Q. I say you were afraid you might go ashore and that is the reason you anchored there?

A. I was waiting for the steamboat there.

Q. How long did you lie there before the tugboat came?

A. I didn't lay there long.

Q. About how many hours?

A. There was a tugboat before; a small one.

Q. And you wouldn't take that one?

A. I made a contract with him and it run away afterwards.

Q. Do you know who that was?

A. Yes, it was the "Rabona."

Q. Then the tugboat "Tacoma" came up and you made a contract with him to tow you in and out for \$700.00?

A. Yes, sir.

Q. You were lying there from the morning of the

(Testimony of C. Schwarting.)

24th until ten or 11 o'clock that night when the tug-boat came along and took hold of you?

A. Yes, sir.

Q. You came to anchor over here in Shilshoal Bay or near there about half-past four or five o'clock on the afternoon of December 25th? A. Yes, sir.

Q. You first put out which anchor?

A. The port.

Q. You first put out your port anchor?

A. Yes, sir.

Q. How long is your port anchor chain?

A. One hundred and thirty-five.

Q. Fathoms? A. Yes, sir.

Q. How many fathoms did you put out when you first put out the port anchor?

A. I don't know.

Q. About? A. About 45 fathoms.

Q. Then that was before the tug left you there?

A. Yes, sir.

Q. And you found that she dragged a little?

A. Yes, sir.

Q. The bottom or anchor ground sloped off from the shore? A. Yes, sir.

Q. And then the tug hauled you up and took in some of that chain? A. Yes, sir.

Q. And then put out your starboard anchor and your port anchor both? That is, you put out your starboard anchor then?

(Testimony of C. Schwarting.)

A. Yes. He towed us to same place and we let go of the starboard anchor.

Q. You put out the starboard anchor on your starboard bow and your port anchor was out over your port bow?

A. Yes, sir.

Q. You had your port anchor out with about forty fathoms of chain? A. Yes, sir.

Q. Both anchors took hold of the bottom?

A. Yes, sir.

Q. And the tugboat stayed around there until it was found that you had hold, and the ship was lying securely.

A. Yes, sir.

Q. And then the tugboat went to Seattle?

A. No.

Q. It went away?

A. It went to Ballard to telephone for another tug.

Q. It went to Ballard to telephone for another tug?

A. Yes, sir.

Q. And you were intending to stay there all night and go on to Tacoma the next day?

A. On the anchor place you mean?

Q. Yes. A. No, we drifted away at ten o'clock.

Q. But when you went to anchor there you expected to stay there all night?

A. Yes, that is what we expected.

Q. And the tugboat "Tacoma" went in and was going to telephone to have another tug come out and get you the next morning?— A. We wanted assistance.

(Testimony of C. Schwarting.)

Q. When you came up the Sound, before you anchored there at all, what kind of a wind did you have?

A. On this place where we came on last?

Q. No, when you were coming up Sound all afternoon.

A. We got different winds; westerly winds.

Q. Southerly, mostly, weren't they?

A. We got westerly winds and southerly winds, and got calms and got head winds.

Q. In the afternoon before you came to anchor it was blowing considerable, wasn't it?

A. At that time there was a little breeze, and before we got a head breeze and a calm, and this wind came up.

Q. When you went in there to anchor, what kind of a wind did you have, when you first went there, Captain?

A. We had a westerly wind that time.

Q. About how high a wind was it when you first went there to anchor? A. I think I told that once.

Q. Tell me again, will you, about how much wind?

A. About six to seven knots.

Q. When you told me six to seven knots I was asking you about the wind you had over at Dungeness, and now I am asking you what wind did you have when you first went to anchor down at Salmon Bay?

A. Nearly the same.

Q. The same that you had when you first went to anchor over at Dungeness? A. Yes, sir.

Q. You say that the wind came up and blew very hard when you commenced to drift? A. Where?

(Testimony of C. Schwarting.)

Q. At Salmon Bay? A. Yes, sir.

Q. How long had it been blowing so before you commenced to drift the last time, about ten or eleven o'clock, you said it was.

A. You see, all the time the wind came up more and more.

Q. Kept blowing harder and harder all the time?

A. Yes, sir.

Q. Did your port anchor chain break?

A. Yes, it broke, but we didn't know it that time. That was, that the compressor was split up and we put a tackle on the chain.

Q. But, as a matter of fact, had the chain broken before you put the tackle on it?

A. No, I think not.

Q. Then, first your compressor broke, and you put a tackle on the chain to hold it. A. Yes, sir.

Q. And then after that the chain itself broke?

A. Not at that time, I don't think. We don't, can't tell. We put a tackle on and the hook broke from the tackle.

Q. And you let go some more chains?

A. No, it slipped out, and we got on another compressor around the windlass.

Q. Now, do you know when the chain itself broke?

A. I think it broke the moment the hook broke.

Q. You think it broke the moment the hook broke?

A. Yes, sir.

(Testimony of C. Schwarting.)

Q. How much of your chain was lost?

A. Ten fathoms.

Q. You lost ten fathoms of your chain?

A. Yes, we saw that when we brought the anchor up.

Q. When you attempted to heave the anchor up, you found that the anchor was gone? A. Yes, sir.

Q. And you took in your chain that was left, and found that ten fathoms of chain was missing?

A. Yes, sir.

Q. Now, have you got the end of it that was broken off, have you got that on the ship?

A. Yes, there is five fathoms on the ship.

Q. How many fathoms have you got on the ship?

A. Five.

Q. Well, you have 130 fathoms altogether?

A. One hundred and thirty-five.

Q. Did you lose 130 fathoms of chain?

A. No, we lost only ten fathoms.

Q. Now, have you got the length that was broken, the piece that was broken, any part of it?

A. No, we haven't got the broken piece; that is just the same as this one; that was good.

Q. The one that you have the end of it is good.

A. Yes, sir.

Q. Then the broken one is missing?

A. Yes, sir.

Q. Well, now, about the time that you lost your port anchor, your starboard anchor began to drag, did it?

(Testimony of C. Schwarting.)

A. Yes, we couldn't see, you see, but we thought so.

Q. You guessed so and thought so?

A. Yes, you see afterwards, after the vessel dragged, we saw the chain slacked.

Q. Then you knew that your port anchor was gone?

A. Yes, sir.

Q. And you think that it broke just about the time that you commenced to drag? A. Yes, sir.

Q. In other words, your starboard anchor wasn't sufficient to hold your ship?

A. No; you see, the ground it goes down, and slacks the chain off and you get in deeper water.

Q. In other words, what you mean is that as the ship drags it towards deeper water it pries the anchor out of the sloping bottom? A. Yes, sir.

Q. And you kept on dragging until you struck the "Mildred"? A. Yes, sir.

Q. Struck her bowsprit? A. Yes, sir.

Q. And then you dragged on until you struck the "Stimson"? A. Yes, sir.

Q. When you were anchored there with both your anchors out, how far, how many ships' lengths, were you away from where the "Stimson" was at anchor; about how far was it? A. I don't, can't say that.

Q. But your best judgment, Captain?

A. I can't say. I didn't watch all the other ships. It isn't possible. Two times we put a tackle on the chain.

Q. You don't understand me. I think, Captain, what I want to get at is, when you were at anchor here at Sal-

(Testimony of C. Schwarting.)

mon Bay, when you were riding at your anchors, how many ship lengths do you think you were from where the "Stimson" was lying at her anchors? About how far were you apart when you were both at anchor?

A. I don't can tell anything. We put these tackles on the chain when we dragged, and we couldn't look for the other vessels. We had a lot to do.

Q. Captain, you were lying there for five or six hours before you commenced to drag, were you not?

A. Not that much.

Q. From five o'clock until ten or eleven?

A. Before ten.

Q. Well, you commenced dragging you think before ten? A. Yes, sir.

Q. No; you came to anchor there just before dark, didn't you? A. Yes, sir.

Q. You saw the other three ships, didn't you?

A. Yes, sir.

Q. You saw where the "Stimson" was, the one that you afterwards ran into?

A. That ship lay far from us.

Q. About how far, three or four ship lengths?

A. Yes, about that.

Q. Three or four ship lengths away?

A. Yes, sir. If we measured we know it exactly, but if we don't measure it we don't know it. That is all guessing and nothing else.

(Testimony of C. Schwarting.)

Q. Your judgment would be about four or five ship lengths?

A. That is what I say the first time, four ship lengths, but we dragged afterwards.

Q. You mean your ship dragged?

A. Yes, sir.

Q. You don't know whether the "Stimson" dragged before you struck it?

A. No, you can't ask me that question. I don't know anything about it.

Q. Now, Captain, you say your port anchor was a 36 hundred-weight? A. Yes, sir.

Q. Without the stock?

A. Yes, that is what I have told before.

Q. When did your ship get this anchor and chain?

A. I don't know.

Q. Was it on the ship when you took command of it?

A. Yes, sir.

Q. What kind of an anchor was it, do you know?

A. It was an iron anchor.

Q. An iron anchor? A. Yes, sir.

Q. Can you describe the anchor?

A. Well, I don't know what you call this anchor. There are different anchors.

Q. I know, and that is why I am asking you.

A. I don't know the name of this anchor.

Q. Now, what was the size of your starboard anchor? What was the weight of your starboard anchor?

(Testimony of C. Schwarting.)

A. I don't can tell you. I think it was 38 cwt. without the stock.

Q. What was the length of the chain on your starboard anchor?

A. It had the same length of the port anchor, 135 fathoms.

Q. What was the size of your starboard chain?

A. Two and one-fourth.

Q. The same size chain? A. Yes, sir.

Q. The same make of anchor?

A. The same make of anchor.

Q. Captain, after you commenced dragging did you slack off your starboard chain any? A. Yes.

Q. How much, about?

A. Well, I didn't slack it; the mate did that.

Q. The mate did it, did he?

A. I don't know, the mate was forward.

Q. Captain, have you ever had any survey made of the "Rickmers," of your ship?

A. Yes, at Hull.

Q. Since you came here in Puget Sound, since December 25th, I mean.

A. Yes, the Lloyd surveyor.

Q. Who was it? A. Hill and Walker.

Q. Captain, since you collided with the "Stimson," and since the night of December 25th, you have had a survey made here, have you? A. Yes, sir.

Q. And that was done by Hill and Walker?

A. Yes, sir.

(Testimony of C. Schwarting.)

Q. When was that? A. That was on Sunday.

Q. Last Sunday? A. No.

Q. How long ago?

A. That was Christmas, that was on the 26th we came in, and that was the 29th.

Q. Have you had any repairs made, Captain?

A. Yes, sir.

Q. Where?

A. On the rigging and in the iron bolts, and the rail aft.

Q. Have you paid for these repairs?

A. No, not all.

Q. Where are the bills?

A. They haven't sent them all in yet.

Q. You have got the bills of all the repairs you have paid for?

A. I haven't got the bills but the ship's agent has.

Q. Who is the ship's agent? A. Fransioli.

Q. How much have you paid out?

A. I don't know how much he paid already.

Q. Have all the injuries to the ship been repaired so she is ready for sea? A. Yes, sir.

LLOYD'S PROVING HOUSE—Tipton.

For testing anchors and chain cables licensed by the board of trade, under the chain cables and anchors acts, 1864 to 1874. (27 & 28 Vic. Cap. 27-34 & 35 Vic. Cap. 101 and 37 and 38 Vic. Cap. 51.)

L. P. H-B (crown) T.

(Testimony of C. Schwarting.)

Machine No. 5, 1887. Tipton, 30th November, 1897.

This is to certify that the iron stock anchor described herein has been proved to the strain appropriate for such an anchor, as directed by the above acts of Parliament, at the above establishment by apparatus and machinery licensed subsequently to the 1st of January, 1873, by the Board of Trade, and is at present licensed by the Board of Trade, and has been examined, after having been tested, weighed and marked as under; and that the following particulars are correct:

	Cwt.	qrs.	lbs.		Ft.	in.
Weight of Anchor	36	0	0	length of Shank	9	10 $\frac{1}{4}$
(ex stock)						

Weight of iron stock	7	1	6	length of Arm	3	10 $\frac{1}{4}$
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#here insert iron or wood as the case may be.

Diameter of Trend, 8 1/8"x7 $\frac{1}{2}$ "

Description Rodgers.

Deflection.

Proof Strain (applied by machine No. 5) 33,2,2.

Mark 12L. LPH—T 5.87B (crown T)

Maker's Name. Intended for ship "Robert Rickmers."
Tons.

Witness my hand,

ERASTUS R. ISIFT,

Superintendent.

This certificate is only to be used when anchors are tested in accordance with the Acts of Parliament.

Appointed by the Committee of Lloyd's Register of British & Foreign Shipping.

(Testimony of C. Schwarting.)

Passed for Ship "Robt. Rickmers," 24/8. 88. B. G.
15H Augsch, 88. Surveyor for Woch.

G. STAULSWAY,

[Seal of Surveyors, Veritas, Glasgow.]

Lloyds Register of Shipping.

LLOYD'S PROVING HOUSE—Tipton.

For testing anchors and chain cables licensed by the board of trade, under the chain cables and anchors acts, 1864 to 1874. (27 & 28 Vic. Cap. 27-34 & 35 Vic. Cap. 101 and 37 and 38 Vic. Cap. 51.)

L. P. H—B (crown) T.

Machine No. 5, 1887.

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This is to certify that the iron stock anchor described herein has been proved to the strain appropriate for such an anchor, as directed by the above acts of Parliament, at the above establishment by apparatus and machinery licensed subsequently to the 1st of January, 1873, by the Board of Trade; and is at present licensed by the Board of Trade, and has been examined, after having been tested, weighed and marked as under; and that the following particulars are correct:

	Cwt.	qrs.	lbs.		Ft.	in.
Weight of Anchor	38	0	0	Length of Shank	10	0
(ex stock).						
Weight of iron stock	7	3	0	Length of Arm	3	9
#here insert iron or wood as the case may be.						
Diameter of Trend	8 $\frac{5}{8}$ "x7 $\frac{1}{2}$ "					
Description	Rodgers					
Deflection	1/16"x0"					

(Testimony of C. Schwarting.)

Proof Strain (applied by machine No. 5) 34. 10. 0. 0
Tons C " "

Mark 12V. LPH—T 5.87B (crown T).

Maker's Name. Intended for ship "Robert Rickmers."
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Passed for ship "Robt. Rickmers," 24/8. B. G.
15th Aug., 88. Surveyor's Office.

G. STAMBURN,

[Seal of Surveyors, Veritas, Glasgow.]

Lloyd's Register of Shipping.

Redirect Examination.

(By Mr. SACHSE.)

Q. Are these papers that I show you, Captain, are they the certificates for your two anchors, the port and starboard anchors?

A. Yes, this for port and this for starboard.

Q. Are they in your possession as master of the ship?

A. Yes, sir.

Q. And you can't let these papers go?

A. No, sir.

(Testimony of C. Schwarting.)

Mr. SACHSE.—We offer these papers in evidence and ask that the reporter make copies of them.

Whereupon a recess was taken until two o'clock P. M.

Two o'clock P. M.

Hearing continued, and the redirect examination of Mr. Schwarting continued by Mr. Sachse.

Q. Captain, in saying that you were lying there two to five ship lengths from the "Stimson," do you wish to be understood as making any allowance in that estimate for the cables of the ship?

A. Yes, we couldn't be ship on ship, that is not proper.

Q. In making that estimate what do you allow for the cables as allowing a ship's length?

A. In some water we have to allow more, and in low water, we don't allow as much.

Q. You said in answer to one of Mr. Hughes' questions that you intended to stay there at Salmon Bay that night?

A. No, we have to do what the steamboat signals. It blows three signals for us to let go anchors.

Q. What was done in this case? Did the tug give you signals of that kind?

A. Yes, sir. All times we can see the signals on board. If he blows three times we let go anchor.

Q. Did the tug give you any signals?

A. Yes, all the time he do it.

(Testimony of C. Swarting.)

Q. Just before you anchored, did the tug give you any signals to anchor? A. Yes, sir.

Q. How many times did he blow?

A. Three times.

Q. Captain, why didn't you let more than one anchor go the first time?

A. Always we let one anchor go when there is not breeze enough for two anchors?

Q. Which anchor do you usually let go?

A. Always the port anchor first.

Q. Why?

A. Because it is the easiest anchor to get at again anywheres.

Q. Any difference between the port and starboard?

A. Yes, the starboard is all the time a little heavier.

Q. Captain, in this libel it is claimed that if it hadn't been for the "Stimson" your ship would have been stranded? A. I don't believe that.

Q. What have you to say about that?

A. That time we cleared the "Stimson" the anchor caught. The ground slopes out that way.

Q. Sloping upward? A. Yes, sir.

Q. After you got clear from the "Stimson"?

A. Yes, sir.

Q. How hard was the wind blowing when you first anchored; how many knots, do you know?

A. Not so many.

Q. How many?

A. I would say about six.

(Testimony of C. Schwarting.)

Q. About six knots?

A. Yes, what we call six. We have got a scale for that.

Q. What direction was it blowing from the first; when you first anchored?

A. I don't know exactly; about southerly. Whether it was just south or not I don't know. I don't can tell that.

Witness excused.

HENRY BRAUE, being called as a witness, being first duly sworn, testified as follows:

(Examination in Chief by Mr. SACHSE.)

Q. How old are you? A. Thirty-eight.

Q. How long have you been to sea?

A. Twenty-four years.

Q. What is your present occupation? What do you do now on the "Rickmers"? What position do you hold? A. I am chief mate.

Q. And were you such last month, in December last?

A. Yes, sir.

Q. Is this your first voyage with the "Rickmers"?

A. On this ship, yes, sir.

Q. How long have you been a first mate?

A. Eleven years.

Q. You remember about the "Rickmers" coming into Puget Sound? A. Yes, sir.

Q. How was she—in ballast or not?

A. She was in ballast.

(Testimony of Henry Braue.)

Q. How much ballast?

A. Sand and stone mixed.

Q. Where did you first anchor before you landed at Salmon Bay?

A. Between Dungeness and Angelus?

Q. How many anchors?

A. One anchor; sixty fathoms chain.

Q. Did anyone take you in tow?

A. The tug came about 11 o'clock alongside.

Q. In the night?

A. No, in the morning, the first one, the "Rabona."

Q. The Puget Sound tugboat, when it came to get you? When did it come to get you?

A. Came at 11 o'clock at night; near 11 o'clock.

Q. Were you on deck when they began towing her and the lines were passed? A. Yes, sir.

Q. Did you hear the arrangements that were made between the captain and the tugboat company?

A. Yes, around tow \$700; \$300 in and \$400 out.

Q. To what point?

A. Twenty miles off Flattery.

Q. To what point in? A. To Tacoma.

Q. The tug took you? A. Yes, sir.

Q. How far did it bring you?

A. Brought us up in tow the next morning to Port Townsend and anchored there at 3:30 in the morning.

Q. 3:30 in the morning? A. Yes, sir, 3:30.

(Testimony of Henry Braue.)

Q. And then what time did you leave Port Townsend?

A. Nine o'clock in the morning of the same day.

Q. And you arrived where?

A. At Salmon Bay at four o'clock.

Q. How was the weather from the time you left in tow of the "Tacoma" to the time that you arrived at Salmon Bay as to being rough or calm?

A. The weather was all right. The wind was about southeast.

Q. How much of a wind was there?

A. From three to four knots at first, and after 12 o'clock I had my watch below.

Q. After twelve o'clock until when?

A. To four o'clock I was below.

Q. Were you on deck when you anchored first up in Salmon Bay? A. Yes, sir.

Q. How was the weather then?

A. A free breeze.

Q. How strong a wind was blowing?

A. Six to seven.

Q. How many anchors did you put out?

A. One anchor.

Q. What happened then?

A. She was dragged then when at anchor.

Q. How long after the anchor was put out?

A. About five minutes.

Q. Did anything happen to the machinery or to the appliances on the ship?

(Testimony of Henry Braue.)

A. The compressor was carried away.

Q. You say carried away, what do you mean?

A. It split.

Q. What is the usual custom about putting out anchors? Do they usually put out more than one anchor?

A. When we got to the land there wasn't much breeze. We had more shelter than we had when were in tow of the tug, therefore we only put out one anchor.

Q. Did you make this drawing (showing drawing to witness)?

A. Yes, sir.

Mr. SACHSE.—We offer this in evidence and ask that it be marked as an exhibit.

(Drawing identified by witness marked as Claimant's Exhibit No. 5.)

Q. Are these your figures on this paper that I show you?

A. Yes, sir.

Q. What do these figures mean?

A. That is the length of the wooden block pulley where this iron is on top; that is four feet and five inches, length of it and the breadth is one foot four inches, and the height is one foot, eight inches.

Q. Can you indicate on this where this compressor broke or split? Show with this red pencil.

A. Right on the middle, and the split right up from the deck.

Q. What caused it to split?

A. The strain on it.

Q. Of what working over it?

(Testimony of Henry Braue.)

A. From the chain.

Q. From the port anchor? A. Yes, sir.

Q. What kind of wood was this block made out of?

A. What they call green heart wood.

Q. Have you got a sample of that wood?

A. Yes, sir.

Q. I would like to see that sample please?

(Witness produces a piece of wood.)

Q. This piece of wood which you show me, what part of the compressor was that?

A. It didn't belong to the compressor, but that is the kind of wood.

Q. Was the wood in the compressor in as good a state as this wood? Was it as good?

(Objected to as immaterial.)

A. I couldn't see anything wrong with it; it was all right.

Q. Have you any piece of wood of the compressor?

A. No, sir.

Q. What become of the compressor block?

A. It was split.

Q. What was done with it?

A. Taken off and a new one put on.

Q. What did you do with the old wood?

A. It was in the old rubbish; they cleaned it away and chucked it over the side.

Q. Thrown away?

A. Yes, thrown away.

(Testimony of Henry Braue.)

Q. This figure No. 2 on this paper, that you just identified, what does that represent?

A. That means the fastening on the deck, through the iron and through this block, to the fastening on the deck, and there is three bolts goes through this fastening.

Q. Those parts which are marked A and B, what are they, of wood or iron? A. Of iron.

Q. Are you familiar with compressors on ships of this kind? A. Yes, sir.

Q. How did this compressor on the "Rickmers" compare with compressors on ships of that size and class?

A. I would say it was all right and strong enough.

Q. Was it as good as the general run of compressors?

A. Yes, sir.

Q. Do you know the cables, the size of the cables on the anchors? A. Two and one-fourth inches thick.

Q. Were they what they call studded chains?

A. Yes, sir.

Q. How big was the stud through the center of the links?

A. Very near the same as the chain.

Q. After the tug left you the first time, and after your one anchor chain broke, did the tug put you back in the same position that it had put you in first, or a little different position?

A. I can't tell exactly; might have been a little bit in another position they put us in. I can't tell exactly.

Q. And that time you left both anchors go?

(Testimony of Henry Braue.)

A. Yes, sir, heaved in the slack over the port chain and let go the starboard anchor.

Q. You heaved in the slack on the port chain and let go the starboard anchor? A. Yes, sir.

Q. How many fathoms of chain did you have out?

A. On the port side 40 and on the starboard 30.

Q. In how deep water were you?

A. I don't know exactly, but in amidships there was 14 and in the stern 16.

Q. Now, when the tug left you the second time did the captain of the tug say anything at that time about the place of anchorage, whether it was good or bad?

A. Well, I didn't hear anything about the place and thought the place was all right.

Q. Did you hear the captain of the tug say that?

A. After that when he came back.

Q. When was that, the next morning?

A. Yes, sir.

Q. He told you he left you in a safe place?

A. Yes, and he said he passed us in the night at ten o'clock and he saw that the lights were burning and the two anchors out and he thought we were in a safe place.

Q. When the two anchors were out what happened after that? How long before anything happened to the ship? A. Until ten o'clock.

Q. Then what happened?

A. Then the tackle carried away on the port chain.

Q. How was this tackle arranged on the port chain after the compressor broke, do you know?

(Testimony of Henry Braue.)

A. Do you mean how it was fastened?

Q. Yes.

A. With a big strap, four inches and a half of rope around the chain, and the chain strapped around the foremast and hooked to tackle on the 4½ inch strap and the chain and the mast.

Q. What was the size of the hook on that tackle?

A. About 1½ to 1¾; I am not sure.

Q. What was it that broke about the tackle?

A. The hook broke.

Q. And as I understand you, that hook was hooked into the cable of the anchor?

A. No, it was a strap fastened on the cable, around the cable, and in that strap the hook was.

Q. Well, after you began dragging, then what happened?

A. We got to windward of the schooner; a three-masted schooner.

Q. Do you know which schooner that was?

A. It was the "Mildred," I guess they call it.

Q. Did you notice how the "Mildred" was anchored at that time? Whether she had out one or two anchors?

A. She was holding on one anchor, and all the ships that I saw there were holding with one anchor.

Q. You didn't see, did you, how the "Stimson" was anchored; whether with one or two anchors?

A. No, I couldn't tell.

Q. You have looked at Libelants' Exhibit No. 1 as to

(Testimony of Henry Braue.)

the location of the "Rickmers" and the other schooners in that bay at that time? A. Yes, sir.

Q. And have indicated in red pencil marks the location, have you? A. Yes, sir.

Q. How long after you began drifting was it before you came in collision with the "Stimson"?

A. Well, I guess half an hour or so; three-quarters of an hour. I can't tell exactly.

Q. Were you on deck?

A. Yes, I was on deck at the time. I was busy with the chain putting a tackle on.

Q. When you got near the "Stimson" did you, or anyone on deck, yell out to the "Stimson"?

A. Yes, I sang out the "Stimson" to slack chain, we were drifting.

Q. What did they say to you?

A. They said they couldn't slack no more.

Q. Do you know how much cable they had out at that time? A. The "Stimson," no.

Q. How was the wind blowing at that time?

A. There was a hurricane blowing.

Q. When did you discover that you had lost your port anchor? When did you find out?

A. After I put the second tackle on I didn't feel the strain on the chain, and then it was before that, but I can't say for sure, and I thought it was gone, and I looked over the bow and I saw the chain was hanging up and down.

(Testimony of Henry Braue.)

Q. You say you put on the second tackle. When was it you put on the first tackle?

A. As soon as we were at anchor with the port chain.

Q. Do you mean that you put the tackle on before any damage was done?

A. The damage was done when the compressor was broke, when we put on the tackle.

Q. Then the first tackle broke; the hook and the first tackle broke after you began drifting the second time?

A. We never stopped, we were always drifting. The first time were together with the schooner, and we never stopped. We were drifting right away.

Q. Do you know from your experience whether or not it is customary to put on a tackle on an anchor cable in cases of that kind, where a compressor gives way?

A. Yes, sir.

Q. State whether or not you put the tackle on in the usual and customary way?

A. Yes, sir.

Q. State whether or not you put the tackle on in the usual and customary way.

A. Yes, sir.

Q. How long were you in collision with the "Stimson"; that is, up against her I mean?

A. Maybe close on an hour and a half.

Q. And then when you got free from her what happened then?

A. She was dragging further. We showed blue lights and rockets.

Q. You mean the "Rickmers" was dragging further?

(Testimony of Henry Braue.)

A. Yes, sir.

Q. Did you finally fetch up? Did your anchor finally hold?

A. When it was nearer to the beach. About half an hour after she was clear of the "Stimson."

Q. That she came to anchor? A. Yes, sir.

Q. What would you say as to the "Stimson" keeping you from being stranded?

A. The "Stimson" could do nothing with us, our anchor was holding all right, and the "Stimson" didn't hold us at all. The schooner will catch the ground anyway going up that way to the ground.

Q. After you anchored with the two anchors, up to the time you began drifting, and while the anchors held, how was the wind at that time?

A. The wind was getting stronger always; always getting stronger.

Q. How high a rate was the wind blowing up to ten o'clock?

A. From seven to ten by the Beaufort scale.

Q. Between what times?

A. Between five o'clock to ten.

Q. It was blowing from seven to ten?

A. Up to ten and eleven on the Beaufort scale; it is numbered from one to twelve, and the wind was from seven to ten.

Q. It got up to ten.

A. Yes, up to ten and eleven.

(Testimony of Henry Braue.)

Cross-examination.

(By Mr. HUGHES.)

Q. What are the dimensions of your ship? How big is your ship? A. She is 2176, I guess.

Q. Net register? A. Net register, yes.

Q. How long is she? A. She is 276.

Q. Over all? A. Over deck.

Q. What is the breadth of beam?

A. Forty feet.

Q. And she had at this time 1130 tons of ballast?

A. Yes, sir.

Q. What is her carrying capacity? How much will she carry? How many tons of freight?

A. Three thousand four hundred.

Q. You left your anchorage and was taken in tow by the "Tacoma" about ten o'clock on the night of the 24th?

A. 11:30.

Q. You were taken in tow by the "Tacoma" about 11:30? A. Yes, sir.

Q. How long had you been at anchor at that place?

A. From 10:30 to 11:30. From 10:30 in the morning until 11:30 at night.

Q. What kind of weather was it when you went to anchor there?

A. It began to freshen from the west. It was calm in the morning before we came to anchor.

Q. And when you anchored there it was fresh from the west? A. It freshened up from the west.

(Testimony of Henry Braue.)

Q. About how was it blowing? A. About five.

Q. Five or six by the Beaufort scale?

A. Five by the Beaufort scale.

Q. What preparation did you make for coming to anchor, before you cast out your anchor, what did you do before you cast out your anchor?

A. Took in the sails.

Q. How much sail had you taken in before you put out your anchor?

A. The upper top sail was standing, the four upper top sails and all the rest were down, and the yards were all back.

Q. About what speed was your ship going when you put out your anchor?

A. She was laying still.

Q. Didn't you have wind enough to carry her with these upper top sails?

A. Yes, but it was laying still.

Q. What anchor did you put out?

A. The port anchor.

Q. What tack had you been sailing on just before you put out your anchor and took in your sails, do you remember?

A. No, I am not sure. The wind was all around from one side to the other.

Q. How near were you into shore when you put out your port anchor? A. About half a mile.

Q. What depth of water did you find there?

(Testimony of Henry Braue.)

A. Sixteen fathoms.

Q. Had you been sounding before that?

A. Yes, sir.

Q. How long had you been sounding?

A. Two or three times before.

Q. For how long a time had you been taking soundings?

A. We always take our bearings and we always know where we are, and we heave the lead, and we found we had to go closer to shore.

Q. Did you go in there for the purpose of getting anchor ground?

A. Yes, of getting good anchor ground.

Q. You went in there for the purpose of coming to anchor, did you?

A. We went there to come to anchor.

Q. What kind of bottom did you have there?

A. The chart shows it.

Q. Do you know? A. It was, I guess, gravel.

Q. Were there many rocks there?

A. No, not that I know.

Q. Did you put out any other anchor than your port anchor? A. No, sir.

Q. How many fathoms did you put out?

A. Sixty fathoms.

Q. Did the wind increase any during that time? How was the weather that day?

A. The weather was all right. The wind slacked after that towards evening, and it was a dead calm at night.

(Testimony of Henry Braue.)

Q. Now, you got in Port Townsend about 3:30 in the morning? A. Yes, sir.

Q. And left there on your way up Sound at nine o'clock in the morning? A. Yes, sir.

Q. You went off duty at twelve o'clock?

A. Yes, sir.

Q. And remained off duty until four?

A. Yes, sir.

Q. Where were you when you came back on deck at four o'clock? Where was your ship?

A. The ship was going right across to Salmon Bay.

Q. About how far was it off from the west point light-house there when you first came back on deck at four o'clock? A. Three miles; three or four miles.

Q. How was the wind blowing then?

A. The wind was from the south; or south southwest.

Q. How much wind was there?

A. From six to seven.

Q. Six to seven by the Beaufort scale?

A. Yes, sir.

Q. Blowing a pretty stiff breeze then?

A. Yes, sir.

Q. You went in there under the lee there to come to anchor? A. Yes, sir.

Q. When you got in there you were well sheltered?

A. Yes, sir.

Q. It was pretty calm when you stopped and put out your port anchor? A. You couldn't say calm.

(Testimony of Henry Braue.)

Q. Well, comparatively well sheltered by the bluff.

A. Yes, but the puffs were always coming around the point.

Q. You first put out your port anchor?

A. Yes, sir.

Q. Was that the time your compressor block split?

A. After that she was dragging.

Q. But when you first put out your anchor, was that the time when this compressor block split here?

A. Yes, when the strain was on it.

Q. Just as soon as you put out the anchor and the anchor caught and began to get the strain of the ship it split this block?

A. Yes, a puff came around the point. It wasn't a strong breeze always.

Q. But this block split just as soon as your ship took up the chain and pulled on the chain? A. Yes.

Q. That was the first thing that happened?

A. Yes.

Q. And that happened right after you put out your anchor? A. Yes.

Q. Well, what did you do immediately?

A. After that split?

Q. Yes.

A. We were busy putting a tackle on. And the same time the tugboat came back and took hold of us and towed us up.

Q. Did your anchor drag when this split, or did you run out some more chain?

(Testimony of Henry Braue.)

A. Some more chain ran out.

Q. You ran out some more chain?

A. No, it ran out itself.

Q. How much of it ran out?

A. I can't tell you; but ten or fifteen fathoms.

Q. As a matter of fact, your anchor didn't drag at all?

A. Yes, sir.

Q. What was there to hold your chain if your compressor block was split? What stopped your chain from running out?

A. The first time when she was dragging?

Q. Right after this compressor block split you say that ten or fifteen fathoms of your chain ran out? How did it come to run out?

A. The same time the tugboat came up and got hold of us and picked us up.

Q. Then, as a matter of fact, from the time that this compressor block split you had only drifted as much as ten or fifteen fathoms until the tugboat picked you up and towed you back?

A. Yes, sir.

Q. Then, as a matter of fact, your anchor didn't drag at all at that time?

A. I don't know.

Q. What was said between you and the tugboat people at that time, when you told them to take you up again?

A. To tow us higher up.

Q. You told them to tow you higher up?

A. Yes, sir.

Q. A little nearer in shore?

(Testimony of Henry Braue.)

A. To tow us higher up and put us in a good place, and then he sang out to "Let go your starboard anchor."

Q. At this time?

A. No, when he took us higher up.

Q. When you first called him, when you say your block was split, you called him to pick you up again and you asked him to tow you a little further up?

A. Yes, sir.

Q. And he came up and put his hawser on board of you again? A. Yes, sir.

Q. Was there anything else said between you or your captain and the tugboat captain, except to tow you further up? A. In a good place.

Q. Did you say anything else? A. No, sir.

Q. Nothing else was said at all?

A. No, sir, I don't know. I was busy in the fore-castle and I don't know what the captain said.

Q. Was anything else said about the block being split? A. I don't know.

Q. You just told the tugboat to tow you up in a better place?

A. Yes, in a better place, that our block was split and the compressor carried away.

Q. Well, he towed you back to about the same place? He towed you up ten or fifteen fathoms further in shore than you were at that time? A. Yes, sir.

Q. And then you dropped your starboard anchor?

(Testimony of Henry Brauc.)

A. Yes, after he sang out to "let go your starboard anchor." The tugboat sang out to "let go your starboard anchor."

Q. And at that time you had out your port anchor?

A. Yes, sir.

Q. Had you got your port chain made fast by that time; by the time the tugboat sang out to "let go your starboard anchor" you had made your chain fast, hadn't you, your port chain?

A. We were busy on it to make it fast.

Q. But you didn't let go your starboard anchor before you made it fast? A. No, sir.

Q. Then you made it fast before you let go your starboard anchor?

A. It wasn't quite fast. We were busy on it making it fast, but wasn't fast then.

Q. But at any rate you made it fast before the tug let go of you? A. Yes, sir.

Q. And when you had it made secure you notified the tugboat that you had made your port chain secure, and then he let go his hawser?

A. Yes, sir.

Q. Before he let go his hawser, you took up that ten or fifteen fathoms that ran out?

A. Yes, before he towed us in. The same time he towed us up we heaved in the slack on the cable.

Q. And then he held you with his line until you put out your starboard anchor, and until you made fast your port chain? A. Yes, sir.

(Testimony of Henry Braue.)

Q. Until you fastened it up as you described.

A. Yes, sir.

Q. Now, I don't know as you have made perfectly clear how you made this fast after your compressor block broke. What did you do to secure this port chain after this compressor block split?

A. We put a 4½ inch strap, manila strap, around these links.

Q. Did you put it around the block also?

A. No, but on the chain.

Q. Did you remove the block?

A. No, couldn't do anything with the block; it was all in pieces.

Q. Split into pieces? A. Yes, sir.

Q. Now, you made fast a 4½ inch manila cable around these links?

A. Yes, sir, and slipped and shoved an iron bar through it so it couldn't slip; through the links like this, and hooked the tackle on here and a chain strapped around the mast, and the other block there, and heaved that tight.

Q. So that was held in position, the port chain, by a 4½ inch manila cable? A. Yes, sir.

Q. You mean 4½ inches in diameter?

A. Yes, sir.

Q. Four and a half? A. Yes, sir.

Q. How far from seven, on until ten, you say the wind kept increasing, blew harder?

A. Yes, freshened up.

(Testimony of Henry Braue.)

Q. And about ten o'clock your ship began to drag, did it?

A. The same time when the tackle carried away it began dragging.

Q. You mean this 4½ inch manila hawser broke—parted?

A. No, the hook carried away.

Q. The hook that fastened it to the mast?

A. No, the hook that was fastened on the strap.

Q. From the tackle that fastened onto the chain?

A. Yes, that carried away.

Q. That was in addition to this manila rope, wasn't it?

A. It was hooked into the manila rope.

Q. That held it one way, and the other was fastened onto the foremast?

A. Yes, sir.

Q. Was one of the fastenings that was hooked onto this manila rope carried away?

A. Yes, sir.

Q. But that didn't let the chain loose, did it?

A. Then about five fathoms of chain ran out after that.

Q. About five fathoms of chain ran out after that?

A. Yes, sir.

Q. That would change its position, but the port chain was still fast to the ship?

A. We secured it up with a windlass.

Q. You had to haul it again with the windlass?

A. No, we never haul anything with a windlass. After the anchor is down we secure the compressor; after the windlass is fast we turn this compressor up and let the strain go on that and take the slack off from

(Testimony of Henry Braue.)

the windlass. After that tackle carried away this stopper on the windlass was fast. Here is the windlass, but it wasn't strong enough, and about five fathoms slipped out. Then it holds and then we start to put on another tackle, and the same time we put on another tackle, the ship was dragging.

Q. While you were putting on the tackle, the ship began to drag? A. Yes, sir.

Q. Now, you noticed then, about that time, that this port chain hung loose over the side of the ship?

A. After that.

Q. When did you notice that?

A. After she was clear of the first schooner.

Q. You didn't notice it before that?

A. No, I was below.

Q. You don't know just when the chain itself parted, just when the iron chain broke, do you?

A. I don't know what time the iron chain broke, but I know what time the hook broke, but nothing about the chain.

Q. The hook that broke, was the hook that held fast the strap that was one of the bearings made fast upon the chain? A. Yes, sir.

Q. But what I am talking about is not the tackle and not the hook which caused about five fathoms more of the chain to slack off from the windlass as you have stated, but the parting of the chain itself, so as to lose your port anchor. When was it you first noticed your port anchor was gone?

(Testimony of Henry Braue.)

A. I didn't notice before we had the chain pulled in the next morning.

Q. You didn't know until the next morning?

A. No, sir.

Q. I thought you said you saw the chain was hanging loose on the side of the ship?

A. There wasn't much strain on it but I didn't know whether it was gone or not.

Q. You knew the anchor must be gone by the way the chain hung over the side of the ship?

A. I didn't know at that time, but afterwards we saw that it was gone.

Q. And you reached the conclusion afterwards that it must have broken about the time you commenced dragging, or shortly afterwards, along about that time?

A. Maybe; I don't know. I can't say.

Q. How much chain did you lose with that anchor?

A. Ten fathoms of chain.

Q. What was the total length of this port chain?

A. One hundred and thirty-five fathoms.

Q. And the starboard chain was the same length?

A. One hundred and thirty-five fathoms.

Q. When was the last time you had examined this chain prior to this?

A. Just a couple of days before we came in.

Q. A couple of days before you came into the Straits?

A. Yes, sir.

(Testimony of Henry Braue.)

Q. About how far was your ship from the "Mildred" when you were riding at anchor before you commenced drifting, or before your anchor chain parted?

A. About four to five hundred feet.

Q. As you rode at anchor, you headed towards the land, I suppose. That is, the wind came from a southerly direction?

A. Yes, sir.

Q. And you were heading towards the land?

A. Toward the land, yes, sir.

Q. Of course the "Mildred" headed in the same way?

A. Yes, sir.

Q. Which side of you was the "Mildred"?

A. On the port side.

Q. Was she further out from the land?

A. She was laying a little behind us.

Q. A little behind you and on your port side?

A. On the port side, yes, sir, but the ships were swinging a little, sometimes it was right aft and sometimes it was on the port side.

Q. The ships were swinging and bouncing on the anchor chains?

A. Yes, sir.

Q. When your ship and the "Mildred" were laying in about the same direction, you think the distance between the stern of your ship and the bow of the "Mildred" would be about four or five hundred feet?

A. About four hundred feet.

Q. Now, you first dragged down onto the "Mildred," didn't you?

A. Yes, sir.

Q. Struck her bowsprit and broke it?

(Testimony of Henry Braue.)

A. Yes, sir.

Q. Then you veered out from that and drifted over onto the "Stimson"? A. Yes, sir.

Q. Before you go further, Mate, will you tell me what direction the "Stimson" was from you when you were riding at anchor before you parted your anchor chain, or drifted—say up to ten o'clock?

A. I don't know where she was lying.

Q. You know about what direction she was?

A. It is marked up on the chart there.

Q. When you were heading the same way she was, that is, when the wind got you, just the same way, she was pretty near aft of you?

A. She must have been pretty near aft of us.

Q. She wasn't off on your port side?

A. On the port side, I guess she was.

Q. You think she was a little on the port side too?

A. Yes, the "Stimson," I guess, was on the port side a little.

Q. A little on the port quarter?

A. Yes, a little, I think. The ship was swinging and it was sometimes on the port quarter.

Q. About how far did you have to drift from the "Mildred" before you struck the "Stimson"?

A. Well, it is over half a mile.

Q. You think it was over half a mile from the "Mildred" to the "Stimson"? A. Yes, sir.

Q. How long did it take you to drift that distance

(Testimony of Henry Braue.)

after you got away from the "Mildred" and before you struck the "Stimson"?

A. I guess it took us close on a half hour.

Q. What were you doing on board your ship during that time?

A. Slacking out chain on the starboard.

Q. How much did you slack out your starboard chain?

A. Over thirty fathoms.

Q. It was thirty fathoms in the first place?

A. Yes, sir.

Q. Did you let out some more?

A. Yes, but I don't know how much more.

Q. About how much more do you think you slacked out your starboard chain before you struck the "Stimson" while you were dragging?

A. She must have had ninety fathoms before we got hold of the "Stimson."

Q. You think that during the time you were dragging there that you slacked out about sixty fathoms of chain?

A. Yes, sir.

Q. Did you do anything else?

A. We were busy with the other anchor and with the tackle, and tried to slack chain, but there wasn't any strain.

Q. There wasn't any strain on the port chain?

A. No, sir.

Q. Then you knew that the port anchor was gone?

A. Yes, sir, for there was no strain from that one.

(Testimony of Henry Braue.)

Q. Did you do anything else during the time you were drifting, during the half hour when you were dragging on your starboard anchor?

A. No, we couldn't do anything else.

Q. You say you were drifting toward the "Stimson"?

A. No, I don't know anything about that.

Q. Well, the "Stimson's" lights were burning?

A. I didn't see them at that time.

Q. You saw them some time before you reached the "Stimson," didn't you?

A. Not that time we were dragging; I had not time to look at the "Stimson." I saw the ship there, and I went up and sang out to slack out chain.

Q. Who commanding on deck?

A. The captain was on deck.

Q. Were any sails put out to alter the course of your ship so she wouldn't strike the "Stimson"? A. No.

Q. Where did you strike the "Stimson"?

A. Struck her on the starboard side first on the bow.

Q. First on the starboard bow? A. Yes, sir.

Q. And then you bounced off from her and came back a little further down on her starboard side, did you?

A. You were right alongside of the "Stimson"; we were first laying a little bit off from the "Stimson," and then bounced right alongside of the "Stimson."

Q. Your port quarters struck her starboard bow, is that it?

A. No, not the quarter, the midships. She was over the midships. Not the quarter.

(Testimony of Henry Braue.)

Q. You struck her midships of your own ship?

A. Yes, sir.

Q. First struck her on her starboard bow?

A. Yes, sir.

Q. And then you kept working down along her starboard side?

A. Yes, sir.

Q. Your rigging caught in her rigging?

A. Yes, sir.

Q. And kept catching as you slid along by the side of the "Stimson"?

A. Yes, sir.

Q. And it held fast there for about an hour and a half?

A. Yes, sir.

Q. No, while you were in that position the "Stimson" also went to dragging?

A. I don't know.

Q. Well, you know that both the ships drifted down there for seven or eight or nine miles?

A. Yes, but I don't know what time she was dragging.

Q. But you were locked together there, and drifted for seven or eight miles together, didn't you?

A. No, I don't think it was that much. How can we drift seven or eight miles in one hour?

Q. At any rate, you drifted down along the shore?

A. Yes, sir.

Q. You drifted until the "Stimson's" anchor caught and stopped her, didn't you?

A. What's that?

Q. The "Stimson" stopped first, didn't she?

A. I don't know anything about that.

Q. You drifted on below the "Stimson"?

(Testimony of Henry Braue.)

A. Yes, the "Stimson" stopped before us.

Q. The "Stimson" stopped first? A. Yes, sir.

Q. Her anchor must have caught and held?

A. After we cleared the "Stimson," the "Stimson" was stopped.

Q. After you cleared the "Stimson," the "Stimson's" anchor held, or did she stop before you cleared her?

A. I don't know.

Q. Well, along about that time anyway, she stopped?

A. Yes, sir.

Q. And then you got clear of her? A. Yes, sir.

Q. And then you drifted a little further and your anchor caught and held your ship? A. Yes, sir.

Q. And you have located the places where you think the "Stimson" and your ship stopped after you had dragged together there for an hour and a half?

A. Yes, sir.

Q. About an hour and a half you were dragging together? A. I guess so, some time like that.

Q. How did you get loose from the "Stimson." Did the ships get loose themselves, or did you do anything to get away from the "Stimson"?

A. We couldn't do anything.

Q. The ships simply tore loose themselves?

A. Yes, sir.

Q. Your ship tore loose from the "Stimson"?

A. Yes, sir.

Q. As a matter of fact, your crew were trying to hold fast to the "Stimson"? A. Our crew?

(Testimony of Henry Braue.)

Q. Yes, to make fast to and hold fast to her?

A. No, we never made anything fast to the "Stimson."

Q. What were you doing while the two ships were drifting, after you had collided and come against the "Stimson," and all the time while you were drifting down to where the "Stimson" held up again, this hour and a half that you were together?

A. For a while when we cleared a little from the "Stimson" we slacked our chain and tried to get clear of it then; after we slacked chain it was the same.

Q. Well, were you doing anything with your anchor or with your chains?

A. How about anchor chains?

Q. Did you do anything with your starboard anchor chain while you were drifting along there?

A. How along there? I don't understand what you mean?

Q. What I am trying to get at is this: After you came into collision with the "Stimson"—what I want to know is when the two ships were lugging together there, and were drifting for about an hour and a half, what were you doing on board your ship? Now, I will ask you before what were you doing from the time you broke loose up to the time that you struck the "Stimson"? Now, I am asking you what you were doing on board your ship after you struck the "Stimson," and during the hour and a half you were drifting together?

A. I don't understand that.

Q. You don't know what I mean?

A. No.

(Testimony of Henry Braue.)

Q. Now, you say that your ship and the "Stimson" were fastened, your rigging fastened into her rigging, and you drifted there together for about an hour and a half?

A. Yes, sir.

Q. You understand that? A. Yes, sir.

Q. Now, I want to know what your crew were doing on board your ship during that time; what were you working at?

A. We tried to clear everything that we could clear.

Q. Tell us what you did?

A. I don't know what we did at that time. I was in an awful hurry at that time and I don't know exactly the things.

Q. What were you hurrying at?

A. To find soundings.

Q. Besides taking sounding, what else did you do, anything? A. We slacked out the chain.

Q. You did slack out your starboard chain, didn't you?

A. Yes, we slacked out our starboard chain.

Q. You have stated that before you struck the "Stimson" you had slacked out about 90 fathoms?

A. Yes, sir.

Q. How much more did you slack out after that—any?

A. I can't tell, exactly, for I couldn't watch the chain; it was windy and dark, and the lamps blowed out. I guess about thirty fathoms.

(Testimony of Henry Braue.)

Q. How much chain did you have out when your ship finally came up and held?

A. About 120 fathoms.

Redirect Examination.

(By Mr. SACHSE.)

Q. You were asked if you examined the cables a short time before this accident? A. Yes, sir.

Q. And you answered that you had examined them?

A. Yes.

Q. What condition did you find them in?

A. In good condition.

Q. You said that no sails were put out on the "Rickmers" to alter your course. Why didn't you put out any sails before you struck the "Stimson"; or was it possible to do so? A. No, it wasn't possible.

Q. Why? A. It was blowing a hurricane.

Q. Did I understand you to say that the "Stimson" fetched up before you got separated from her or afterwards?

A. I don't know what time she fetched up.

Q. Do you know whether it was before you got separated from her or afterwards?

A. She must have fetched up before us.

Q. Was that when you were still locked together when she came to anchor?

A. Well, I don't know. I can't tell you.

Q. This block which is called the compressor here, having the iron jaws on it to hold the cable chain, what is

(Testimony of Henry Braue.)

the object of those iron jaws? Is that simply to hold the chain on board, or for what purpose is it?

A. To tighten this up. The spindle here with the handle on it, to wind it up.

Q. The chain is fastened on the windlass?

A. Yes, sir.

Q. The jaws are on this to keep it from slipping out too fast? A. Yes, sir.

Q. When you were in collision, or locked together with the "Stimson," was it possible to make any efforts to get the ships apart? A. No.

Q. Why?

A. We were on the windward side from the "Stimson" and blowing right against her.

Q. But the wind finally separated you, did it, or how did it come that you got apart?

A. I don't understand.

Q. How did you get apart in the end?

A. After we cleared the rigging.

Q. Was anything done to get them separated?

A. Slacked out chain.

Q. Was anything done to clear the rigging?

A. We let go the braces and that is all we could do, for his mast was on our jib-boom and we couldn't get our jib-boom away. Our jib-boom stuck between his masts, and we couldn't do anything unless the mast was chopped down, was the only way to clear it.

(Testimony of Henry Braue.)

Q. Did you see the captain of the tugboat the next morning? A. Yes, sir.

Q. What did he say at that time after he found you had been drifting?

A. He said he was coming along at ten o'clock and he saw our lamps burning and we had out two anchors, and he thought we were in a good position there and he went away.

Q. Where did he say he was going to?

(Objected to as incompetent, irrelevant and immaterial and as hearsay.)

A. He said he was going to Port Townsend.

Q. The next morning what did he say?

(Objected to as hearsay.)

A. It was blowing and stormy, he says, and he saw there were several ships there getting damaged.

Q. Did he say he had been out to the ocean to get another ship?

(Objected to as hearsay.)

A. He had been out, but if he had got another ship I don't know.

Q. What tug was it towed you down here—the "Tyee"? A. Yes, sir.

Recross-examination.

(By Mr. HUGHES.)

Q. It was the "Tacoma" that towed you up to this point? A. Yes, sir.

(Testimony of Henry Braue.)

Q. You are talking now about what some tugboat said to you? You don't mean the tugboat spoke. Was it the captain spoke to you? A. Yes, sir.

Q. The captain of what tugboat?

A. The "Tacoma"; the next morning he brought us down and the "Tyee" got hold of us and the "Tacoma" went away.

Q. Was it the captain of the "Tacoma" or the captain of the "Tyee"?

A. The captain of the "Tacoma."

Q. What did he say?

A. He said he was out to sea, to see some ships, to look for some other ships that had got damaged, and he passed us at ten o'clock. He was passing us down towards Port Townsend.

Q. What did he say about some ships getting damaged?

A. He said he heard about some ships getting damaged.

Q. He said he heard about some ships getting damaged? A. Yes, sir.

Q. And he told you he was going to Port Townsend at ten o'clock that night?

A. I don't know if he went to Port Townsend; he said he passed us at ten o'clock.

Q. Was it the same man who left you there?

A. Yes, he told me he passed us at ten o'clock.

Q. When did he leave you there, on the 25th?

A. About five o'clock.

(Testimony of Henry Braue.)

Q. Where did he go?

A. At ten o'clock he passed us.

Q. Where did he go?

A. He went over to shore; I don't know the name of the place.

Q. Ballard?

A. Yes, to telephone up for assistance, and at ten o'clock he passed back and went down towards Port Townsend.

Q. That is what he told you the next morning?

A. Yes, sir.

Q. Did he tell you in the presence of the captain of the tugboat "Tyee"? He was there also when he told you that? A. No, sir.

Q. Who else was there?

A. The second mate was there.

Q. It was the "Tyee" that took you in tow, wasn't it?

A. Yes, but the first time they pulled us up in shoal water.

Q. The next morning, who was it first took hold of you, the "Tyee" or the "Tacoma"?

A. The "Tyee," but the captain of the "Tacoma" was right alongside of us and he came on board.

Q. He came on board? A. Yes, sir.

Q. And it was then he told you he passed by you at ten o'clock the night before and he saw that your lights were burning and that you were riding at anchor all right? A. Yes, sir.

(Testimony of Henry Brane.)

Q. And so he went on his way? A. Yes, sir.

Q. Did he tell you anything else about what he saw there that night?

A. He said several things; but I forget what he was saying. He told me about taking up a fisherman who got lost or something.

Q. Do you know what the name of that captain was who told you this? A. No.

Q. Was it Captain Morrison?

A. I don't know his name.

Q. At any rate, it was the same man who was in charge of the "Tacoma" on the afternoon when you were towed up, on the afternoon of the 25th?

A. Yes, sir.

Witness excused.

FRED SCHANK, being called as a witness, being first duly sworn, testified as follows:

(Examination in Chief by Mr. SACHSE.)

Q. How old are you? A. Twenty-five.

Q. How long have you been at sea?

A. Eight years.

Q. How long have you been second mate?

A. Three years.

Q. You were on the "Rickmers" on December 24th and 25th last, were you? A. Yes, sir.

Q. As second mate? A. Yes, sir.

Q. You are still employed on it? A. Yes, sir.

Q. As second mate? A. Yes, sir.

(Testimony of Fred Schank.)

Q. Do you remember when the "Rickmers" was taken in tow by the tug between Dungeness and Port Angelus? A. Yes, sir.

Q. Were you on watch at that time?

A. Yes, sir. I was on watch from eight o'clock that night.

Q. How was the weather then?

A. It was dead calm that night.

Q. Had the ship been at anchor there?

A. Yes, we went to anchor in the morning about eight o'clock, I guess.

Q. How many anchors did you have out?

A. One anchor.

Q. How did you come to the sound; in ballast or otherwise? A. We had ballast.

Q. How much ballast did you have?

A. I think about 1100 tons.

Q. You were taken in tow by the "Tacoma" and where were you brought to?

A. We were brought up to Port Townsend.

Q. And then where next were you taken to?

A. There we stopped until about nine o'clock in the morning.

Q. And then taken to where?

A. And then I don't know. Then I had my watch below until twelve o'clock.

Q. You were not on watch then when you came to anchor in Salmon Bay at four o'clock in the afternoon?

A. Yes, I had the watch then.

(Testimony of Fred Schank.)

Q. How many anchors were put out when you first came to anchor? A. One anchor.

Q. Which anchor was that?

A. The port anchor.

Q. Were you on watch when the compressor broke?

A. No, the mate came forward and I went aft.

Q. Did you have anything to do with the fixing of it afterwards?

A. Yes, I was there afterwards. I went away then when the thing was broken and we were near that three masted schooner there.

Q. Did you assist in putting the shackle on the anchor cable, after the compressor broke?

A. Yes, I helped when we put the tackle on.

Q. Can you tell what kind of a tackle was put on there? A. Yes.

Q. Just tell?

A. It was a two sheaved block with a strap around the both blocks, and a strong hook.

Q. What sized hook was it?

A. It was about two inches, I guess, thick.

Q. What became of that hook afterwards; anything happen to it?

A. No, nothing happened that time, it was in the night-time at ten o'clock.

Q. It broke afterwards? A. Yes, sir.

Q. Were you on deck when the "Rickmers" began drifting the second time? A. No, sir.

(Testimony of Fred Schank.)

Q. Well, after she was drifting were you called on deck?

A. Yes, as soon as the first collision was.

Q. As soon as the first collision? A. Yes, sir.

Q. With what schooner?

A. With a three-mast schooner.

Q. Did you notice that night how these schooners were at anchor; whether they had out one or more anchors?

A. No, I only saw when we were coming from Port Townsend that all these schooners were lying there with only one anchor out.

Q. Did you see the "Stimson"?

A. I saw the four-master schooner, but I don't know the name.

Q. Do you know whether she had out one or more anchors? A. I don't remember.

Q. But you remember about the other three?

A. Yes, and when that compressor broke and the chain ran out I was fore and we were nearly to the four-masted schooner, and they hoisted up their fore-stacer and put their helm to starboard, and she went off and so we got clear of her.

Q. Had you made any examination of the anchor cable just prior to this accident?

A. Yes, I was there when we put them out.

Q. What condition were they in?

A. They were in good condition.

(Testimony of Fred Schank.)

Q. How long before the accident was that?

A. About three or four days before we came into the Straits of Fuca.

Q. Did you examine the compressor at that time?

A. Yes, I was there when the donkey-man put the screws in.

Q. What way did you examine these things; do you take them apart, or how?

A. I looked at them to see that they were all right, and I couldn't find anything wrong with them.

Q. Do you know the size of that anchor chain?

A. Yes, it's two inches, I guess, or $2\frac{1}{4}$.

Q. Is that what they call a studded chain?

A. Yes, sir.

Q. How big are the studs through the links?

A. About the same size the chain is.

Q. You went to look for the lost anchor of the "Rickmers" afterwards, didn't you? A. Yes, sir.

Q. When was that—how long after the collision?

A. I can't tell; it was on a Monday; I guess it was about a fortnight after that.

Q. Was this schooner "Corona" up in the bay at that time yet?

A. I don't know which schooner it was that lost the jib-boom. It was the schooner we had the first collision with, and it was lying there yet.

Q. Lying in the same place?

A. Yes, lying in the same place.

(Testimony of Fred Schank.)

Q. I wish you would look at that map, Libelant's Exhibit No. 1, and indicate as near as you can the position of the "Rickmers" on the night of the accident, with reference to the "Stimson." You do not agree with the others. Indicate where you claim the positions were.

A. Here is a little corner here, and always some little puffs come around this corner, and made our ship go from one side to the other.

Q. Mr. Schenk, will you indicate with this pencil in blue, the place where you think the "Rickmers" was anchored when she had the two anchors?

A. It was here.

Q. The blue dot with the ring around it is the place where you think it was anchored?

A. Yes, sir.

(Counsel writes the name "Schenk at this point to indicate that this is the place where he locates the "Rickmers.")

Q. Mr. Schenk, what kind of wood is this compressor made of? A. It is green heart.

Q. What kind of wood is that, as to being strong or otherwise? A. That is very strong wood.

Q. Is that wooden block bound with iron in any way?

A. Yes, the top of that block.

Q. These things marked "A" are the iron jaws that hold the chain from slipping?

A. Yes, sir.

(Testimony of Fred Schank.)

Q. And the places "B" and "B" are iron bolts, on top of the wooden block? A. Yes, sir.

Q. After you began drifting what was done, if you know, to prevent your coming in collision with the "Stimson." }

A. We couldn't do nothing. When I came on deck we were nearly to the "Stimson." I guess we were nearly three ship lengths off from there.

Q. When you came on deck? A. Yes, sir.

Q. Were you at any time able to do anything to prevent it?

A. No, sir, we couldn't. And if we set any sails we would have been blown in pieces.

Q. How was the wind blowing at that time when you came on deck?

A. It was about force 11 by the Beaufort scale.

Q. Is that a high wind?

A. Yes, very high. Nearly the highest. Only one more—12.

Q. What is the usual custom with ships of this kind when they come to anchor? Is it customary to put out one or more anchors? }

(Objected to as immaterial.)

A. One anchor.

Q. What anchor did you put out?

A. The port anchor, for we had the hawser of the tugboat on the starboard side, so we put out the port anchor.

(Testimony of Fred Schank.)

Q. You were not on deck when the first anchor was put out at four o'clock?

A. Yes, I had the watch from twelve to four o'clock.

Q. You put out one anchor?

A. Yes, I was standing on the forecastle head.

Q. Did you notice whether or not everything was all right at that time? A. Yes, sir.

Q. Did you examine it and look at it, and look it over?

A. No, not at that time. Before I went up to the forecastle head I went down and looked at it, to see if everything was all right.

Q. Did you have any talk, or hear any talk, with the tugboat captain, when he left you there first that night?

A. Yes, I was there with the mate, together.

Q. When he first put you to anchor?

A. Yes, sir.

Q. What did the tugboat captain tell you, or did he tell you anything about it being a safe place to anchor?
(Objected to as leading.)

Q. Did the tugboat captain, when he first let go of you, say anything to you about its being a good place to anchor, and if so, what did he say?

(Objected to as leading.)

A. No, but he said the next morning, it was a good place to go to anchor.

Q. Did he say anything to you on the evening before?

(Testimony of Fred Schank.)

A. In the evening I didn't hear anything about that.

Q. What did he say the next morning?

A. He said that he passed us the night before about ten o'clock on the way down to Port Townsend, and he saw that our anchor lights were burning all right, and he knew it was a good position there, and so he went down, and in the morning, early in the morning, a passenger steamer was coming down and told him that one four-masted schooner was there at the west point, nearly on the beach, and so he came back with another steamer of the same company, the "Tyee."

Q. Did the captain of the tugboat say anything to you about what he had been doing during the night?

A. He was looking for some business during the night. He said he picked up a fisher boat there.

Q. Were you on watch when you left Port Townsend?

A. In the morning, no, I have the watch from twelve to four in the afternoon.

Q. What time did you leave Port Townsend?

A. In the morning at nine o'clock.

Q. Were you on watch then?

A. No, I wasn't on watch then.

Cross-examination.

(By Mr. HUGHES.)

Q. You say that this was your first trip, was it, into the Straits of Fuca and Puget Sound?

A. Yes, sir.

(Testimony of Fred Schank.)

Q. You sailed up until you got between Angelus and Dungeness? A. Yes, sir.

Q. And then came to anchor on the morning of the 24th? A. Yes, sir.

Q. Were you on watch at that time?

A. Yes, we were, both watches were on deck at that time when we went to anchor there, for we had to take all the sails away.

Q. What hour was it when you went to anchor?

A. I guess it was about nine o'clock.

Q. That was an hour after the watch had gone off duty, wasn't it? It was an hour after your watch had gone off duty?

A. No, it was my watch that morning.

Q. From eight to 12 was your watch?

A. Yes, sir.

Q. I thought you said you were on watch from eight to 12 at night?

A. My watch was from 8 to 12 again.

Q. There are three watches, are there?

A. Yes. When I watch in the morning from 8 to 12 I have a watch below, and I come on deck again from 4 to 6, and at 6 I go away a_r in to 8, and at 8 I come on deck again until 12.

Q. How many watches did you have?

A. Two watches.

Q. Both watches were called out?

A. Yes, sir.

(Testimony of Fred Schank.)

Q. Was the wind blowing pretty hard, and is that the reason you called out both watches?

A. We always do that when we come to anchor; take both watches on deck.

Q. How long did it take you to take in your sails and come to anchor?

A. It wouldn't take long; about half an hour, I guess.

Q. How was the wind blowing?

A. About four to five by the Beaufort scale.

Q. Who put out the anchor?

A. The chief mate.

Q. Did you help?

A. I was lowering the sails down.

Q. You were lowering down the sails?

A. Yes, sir.

Q. How many sails were still up when the anchor was put out? A. The top sails.

Q. All your top sails were up?

A. No, we had two down. We had only one top sail up, and the braces were all pulled back, the yards were all pulled back.

Q. Which way was the wind blowing?

A. It was from the westerly.

Q. What direction was your ship moving? With the wind? A. I don't understand.

Q. What direction was your ship going at the time you put out your anchor? Going with the wind?

A. Yes, with the wind.

(Testimony of Fred Schank.)

Q. Now, you were on duty in the afternoon when you were coming down from Port Townsend, from 12 o'clock until 4? A. I don't understand.

Q. It was your watch from 12 o'clock to 4, when you were being towed from Port Townsend down to where you came to anchor?

A. In the afternoon, yes, sir.

Q. How was the weather and the wind during that watch?

A. It was a pretty strong breeze, and in the afternoon it was south southeast by the compass.

Q. A pretty heavy wind?

A. Yes, about six or seven.

Q. Did they have any difficulty in towing you?

A. At last we went very slow through the water.

Q. Towards the last it was pretty difficult for him to handle you? A. Yes, sir.

Q. And so he took you over near this lee shore?

A. Yes, over to the other side. We went on the right shore; the right-hand shore.

Q. He took you over and put you under this lee shore? A. Yes, sir.

Q. You were still on watch when he came to the anchor ground? A. Yes, sir.

Q. Were you still on watch when your port anchor was dropped?

A. No, it wasn't my watch, but I was on deck still.

Q. How long was it after your watch?

(Testimony of Fred Schank.)

A. It was just after four o'clock.

Q. Then it was immediately after your watch? Immediately after four o'clock?

A. Yes, sir.

Q. When you came to anchor then it was about four o'clock? A. Yes, about four o'clock.

Q. When your anchor chain ran out about forty feet, what happened? Was that the time when it split this compressor block? A. Yes, sir.

Q. When your chain had got out about forty feet?

A. Yes, and the compressor took the strain of the chain and then it split in two pieces.

Q. Then what was done there?

A. We called the tugboat back again, and told him about our misery and he gave us his hawser again.

Q. What did you tell him?

A. Said that our compressor was broken, and said that we wanted to be pulled up to our old place again.

Q. Did you tell him you were making it fast again?

A. Yes, sir.

Q. How much of the cable did you let out after the compressor broke?

A. I can't tell that for I wasn't there.

Q. Well, he gave you the rope and pulled up again?

A. Yes, sir.

Q. And held you until you put out your starboard anchor and secured your port chain?

A. Yes, sir.

(Testimony of Fred Schank.)

Q. Were you on duty that night from eight to twelve?

A. This same night, Christmas night?

Q. Yes. A. No, I had my watch below.

Q. From eight to twelve?

A. Yes, and I got up when the first collision was, about ten o'clock. I heard it.

Q. You heard the collision with the "Mildred"?

A. Yes, sir.

Q. But you had got away from the "Mildred" before you heard it?

A. Yes, when I got on deck we cleared of the "Mildred." She was right ahead of us.

Q. Were you drifting astern? A. Yes, sir.

Q. How much was she ahead of you at that time?

A. I guess about one ship's length.

Q. And how much were you ahead of the "Stimson"?

A. That, I can't tell.

Q. When you first came on deck?

A. I can't tell that proper.

Q. What is your best judgment about it?

A. I guess it was about five ship's lengths.

Q. You think it was that much when you got on deck; that you were that far from the "Stimson"?

A. Yes, sir, about four to five. I can't tell properly.

Q. Now, when you were answering Mr. Sachse awhile ago as to what you did, you said to him that you

(Testimony of Fred Schank.)

were only three ship's lengths away when you came on deck, and you didn't see what was done before, and you didn't have any time to do anything. Isn't that what you said a moment ago?

A. Yes, I said there was no time for anything.

Q. Which do you think is right—that you were three ship's lengths or five off from the "Stimson" when you got on deck?

A. It is very difficult to see in the night-time to see how much it is.

Q. Did you pay out any more chain?

A. When I was on deck, no.

Q. While you were drifting down towards the "Stimson"?

A. While I was on deck we didn't slack out any more chain.

Q. You didn't attempt to put out any sails at all?

A. No, sir, it wasn't possible.

Q. Have you got any other anchors on that ship?

A. Yes, we have one anchor in reserve.

Q. Has that got a chain fast to it?

A. No, she is standing back behind the foremast.

Q. Did you have any kedge anchor?

A. I don't know what you mean.

Q. Any smaller anchor?

A. Yes, we have got them.

Q. Are they in readiness so you can use them any time?

(Testimony of Fred Schank.)

A. Yes, they are above deck, on the fore part above deck.

Q. How did you strike the "Stimson"?

A. We struck her at our jib-boom.

Q. What part of your jib struck her?

A. The fore rigging.

Q. On your port side?

A. On our port side, yes, sir.

Q. You struck him on his starboard bow?

A. Yes, sir.

Q. Did your rigging catch fast into the "Stimson's" rigging? A. Our yards, did, yes, sir.

Q. Tore that away gradually, didn't it; tore away his fore rigging?

A. Yes, sir, and took off his fore top sails.

Q. What did you catch in then?

A. We caught his main mast with our jib-boom. His main rigging.

Q. Did you tear loose from there?

A. Yes, after awhile.

Q. How far had you been drifting before you tore loose from the rigging of his main mast?

A. I don't understand.

Q. Well, you drifted there together for quite a distance before your jib-boom tore away from the rigging of the main mast? A. Yes, sir.

Q. And then what did you catch fast to?

A. We caught the mizzen mast.

(Testimony of Fred Schank.)

Q. And you finally tore loose from that; after awhile you tore loose from the mizzen mast?

A. Yes, sir.

Q. And was then when you got loose from the ship?

A. Yes, we caught the spanker, too.

Q. You caught fast on the spanker mast, too?

A. Yes, sir.

Q. And finally you tore loose from that?

A. Yes, sir.

Q. And then you drifted away from the "Stimson"?

A. Yes, sir.

Q. Had the "Stimson" held; was she drifting when you finally separated from her, or had she come to anchor again?

A. When we were free her anchor stopped there.

Q. Did your anchor hold before you got free; just before you got free?

A. No, after we were free from her.

Q. After you were free from her her anchor held right away?

A. Yes, and we drifted further to the beach.

Q. About how much further did you drift? Half a mile?

A. About half a mile, yes, sir.

Q. And then your anchor held? A. Yes, sir.

Q. And all this time you had been drifting along the shore? A. Along the shore, yes, sir.

Q. Did you go a little further in shore than the "Stimson"?

(Testimony of Fred Schank.)

A. Yes, we were lying much closer to the shore than the "Stimson" was.

Q. When your anchor finally caught?

A. Yes, sir.

Q. How many fathoms of chain did you have out there that night when your anchor caught, after you got free from the "Stimson"?

A. One hundred and twenty fathoms; when we got free from the "Stimson" we put out again some more chain.

Q. Put out some more chain after you got free?

A. Yes, sir.

Q. How much more did you put out after you got free? A. About thirty fathoms.

Q. Put out thirty fathoms after you got free?

A. Yes, sir.

Q. And you had out altogether 120 fathoms?

A. Yes, sir.

Q. And then you rode there all right until morning?

A. Yes, sir.

Q. And during this time the wind was going down all the time? A. Yes, sir.

Q. All the time you were drifting along there together the wind was going down?

A. No, after that, when our anchor held in the ground, then the wind slacked up a little and in the morning when the steamer came it was nearly calm again.

(Testimony of Fred Schank.)

Q. It wasn't blowing quite so hard as it was when you first struck the "Stimson." It kept getting lighter after that, didn't it? A. No.

Q. What I mean is that the wind was going down a little before you came to anchor; along about the time that you parted from the "Stimson," and from there on the wind kept getting lighter?

A. It was about the same as it was before.

Q. And about the time you came to anchor, the wind was getting lighter then?

A. Sometimes it was squally.

Q. You mean you put out 30 fathoms of chain?

A. Yes, about that.

Q. I mean when you first put out your anchor you put out 40 fathoms? A. Yes, sir.

Q. I mean, and you mean, forty fathoms.

A. Yes, sir.

Redirect Examination.

(By Mr. SACHSE.)

Q. How was the wind blowing there when you were drifting towards the "Stimson," a steady blow?

A. No, sometimes it was very hard.

Q. Did you have a full crew on board at that time?

A. Yes, sir.

Recross-examination.

(By Mr. HUGHES.)

Q. How many were your crew?

A. Twenty-seven altogether.

CHARLEY BOEHNKE, being called as a witness, being duly sworn, testified as follows:

(Examination in Chief by Mr. SACHSE.)

Q. What is your business? A. Blacksmith.

Q. How old are you? A. Thirty-six.

Q. Where are you at work now and where were you at work in December last? A. I was on deck.

Q. What is your business? A. Blacksmith.

Q. Were you employed on the "Rickmers" in December last? A. Yes, sir.

Q. In what capacity? What were you doing?

A. I was on deck.

Q. What was your business on the ship? What do you do on the ship?

A. I help on deck sometimes, and sometimes in the donkey-house and doing the blacksmith work.

Q. You are the man they call the donkey-man on the ship? A. Yes, sir.

Q. How long have you followed that business?

A. This is the first sailing ship that I was on.

Q. What kind of ships were you on before?

A. Steamers.

Q. How long have you been on steamers?

A. About five years.

Q. Mr. Boehnke, state whether or not, before you arrived here at the Sound you made any examination of the compressor, and windlass and chains on this ship, the "Rickmers"?

(Testimony of Charley Boehnke.)

A. Yes, I do always. I take them off and put them away and look at them, and put them together again.

Q. Did you put them in position before you arrived here in the Sound? A. Yes, sir.

Q. How long before? A. A couple of days.

Q. Did you examine them while you were doing this work? A. Yes, sir.

Q. How did you find them; in what condition?

A. They were all right.

Q. How much did you take that machinery apart, connected with the compressor and windlass, and all that; what did you do with it? Did you take it all apart?

A. Not all. The stoppers and the screws.

Q. You took them apart and looked at them?

A. Yes, sir.

Q. They were all right?

A. Yes, sir.

Q. Did you have anything to do with the anchoring of the ship up here in Salmon Bay?

A. No, sir, I didn't have anything to do with that.

Q. Did you have anything to do with the shackling on the chain?

A. No, sir, only the small chain, when they break one we heave the anchor by two small chains.

Q. This chain on the "Rickmers." Do you know, or can you say from your experience as a sea-going man,

(Testimony of Charley Boehnke.)

whether that chain was the usual and ordinary sized chain used on ships of that kind?

A. Yes, it was a strong chain.

Q. How big was this chain?

A. It must have been two inches; it wasn't much over that.

Q. And it is what is called a studded chain, is it?

A. Yes, sir.

Cross-examination.

(By Mr. HUGHES.)

Q. You don't understand English very well?

A. Not good.

Q. You couldn't understand all that this gentleman said to you?

A. Yes, I understand that.

Q. Could you understand all that?

A. Yes, sir.

Q. Did you ever measure these chains?

A. No, never measured the size of the links, but I could see it was two inches through it. I never measured them.

Q. When was it that you put the anchor chain back on the windlass?

A. A couple of days before we got into the bay.

Q. Who put it on?

A. I put the windlass on and the screws.

Q. You put on the windlass and who put the chain on?

A. The mate and the sailors.

Q. You didn't look at it again after that time, did you?

(Testimony of Paul Hesse.)

A. No, sir.

Q. That was a couple of days before you got to Cape Flattery?

A. Yes, sir.

PAUL HESSE, being called as a witness being first duly sworn, testified as follows:

(Examination in Chief by Mr. SACHSE.)

Q. How old are you, Paul? A. Twenty years.

Q. How long have you been at sea?

A. Five years.

Q. Do you work on the "Rickmers"?

A. Yes, sir.

Q. What business? A. Able seaman.

Q. Paul, did you help put on this shackle on the anchor chain at the time just before coming into collision there?

A. Yes, sir.

Q. Did you help put the chain on the windlass before you arrived at the Sound? A. No, sir.

Q. You didn't help in that? A. No, sir.

Q. What kind of a shackle did you put onto that chain? A. A two sheave block.

Q. How was it made fast?

A. Four inches and a half rope and the chain strapped on the mast.

HENRY BRAUE, being recalled for further cross-examination, testified as follows:

Cross-examination.

(By Mr. HUGHES.)

Q. Have you secured another anchor in place of the port anchor? A. Yes, sir.

Q. Did you get a new chain?

A. No we got forty-five fathoms chain besides our other 135 fathom in between decks.

Q. You say you got a new anchor?

A. Got a new anchor, yes, sir.

Q. How heavy an anchor is it?

A. That's a pound more than the old one.

Q. How much is it?

A. Three thousand six hundred and one.

Q. What chain have you put on it; the same you had on the other one?

A. On the bow now we have got an anchor. These ships always have the third anchor on board, and we have got that on the bow now, on the port bow.

Q. In place of the one that is lost?

A. In place of the 3,600 pound anchor.

Q. The one that is lost? A. Yes, sir.

Q. And what chain have you got on that anchor?

A. The same chain on the port side, only we took five fathoms off and shackled that end.

Q. You shackled in five fathoms from a new chain? What I want to get at is what chain are you using with

(Testimony of Henry Braue.)

this port anchor that you have now put on the ship, what chain are you using?

A. The same chain we had been using before on the port side.

Q. Well, you lost about ten fathoms you say of that chain? A. Yes, sir.

Q. Now, is your port chain only 125 fathoms long?

A. One hundred and twenty fathoms now. We took the five fathoms off.

Q. You took five fathoms more off from the chain?

A. From the port chain, yes, sir, and each length is fifteen fathoms. We have to take five fathoms off to get to the big link.

Q. Upon your port chain now is only 120 fathoms?

A. Yes, sir.

Q. It used to be 135 fathoms?

A. Yes, sir.

Q. And you have the same one that you did have?

A. We have the forty-five fathoms chain besides that.

Q. Where is that forty-five fathom chain?

A. Between decks.

Q. You have put in new chain?

A. No, sir.

Q. You bought a new anchor and have that stored between decks?

A. No, the new anchor is on deck.

(Testimony of Henry Braue.)

Q. But you haven't put it in use? You are not using it?
A. No, sir.

Q. Just stored it? A. Yes, sir.

Redirect Examination.

(By Mr. SACHSE.)

Q. You have put an anchor in place of the anchor lost?

A. Yes, sir.

Q. But this new anchor is a spare anchor?

A. Yes, it is the same as the one we lost. But this one we have now on the boat is bigger.

Q. How much bigger is it than the one you lost?

A. Four hundred pounds.

Recross-examination.

(By Mr. HUGHES.)

Q. The new port anchor is forty hundred weight?

A. No, it is one pound different than the one we lost.

Q. You bought one new anchor, haven't you?

A. Yes, sir.

Q. That new anchor that you bought is the same weight as the one you lost, with the exception of being one pound heavier? A. Yes, sir.

Q. But you had an anchor that you carried on your ship before that was not in use, and that anchor is the one that you put on your port chain?

A. Yes, sir.

Q. Instead of the new one that you bought?

A. Yes, sir.

(Testimony of Theo. Kevister.)

Q. Now, the anchor that you put on your port chain, and now have on your port chain, weighs how much?

A. Four thousand pounds, or forty hundred weight.

Witness excused.

THEO. KEVISTER, being called as a witness, being first duly sworn, testified as follows:

(Examination in Chief by Mr. SACHSE.)

Q. How old are you? A. Twenty-three.

Q. What do you do? A. On board the ship.

Q. What ship? A. The "Rickmers."

Q. Were you on board ship on December last?

A. Yes, sir.

Q. What is your business on ship?

A. Able seaman.

Q. Were you one of the men who helped put the shackle on this port cable just before you had the accident up there at Salmon Bay? A. Yes, sir.

Q. What kind of shackle was put on there; can you tell us?

A. I don't remember very well what kind it was.

Q. How was the wind blowing that night after you began drifting; do you know?

A. It was blowing pretty hard.

Q. How long have you been at sea?

A. About four years.

Q. How long have you been with this ship?

A. Eleven months, and about ten days.

(Testimony of Theo. Kevister.)

Cross-examination.

(By Mr. HUGHES.)

Q. Were you on deck between eight and twelve o'clock that night, while this ship was drifting?

A. Yes, sir.

Q. Was your watch on deck? A. Yes, sir.

Q. Which way was the wind blowing? From the land?

A. She blew from the lighthouse.

Q. From that direction? A. Yes, sir.

Q. You broke your port chain and lost that anchor, didn't you? A. Yes, sir.

Q. Did you commence drifting right after that? Did your ship commence to drift right after you broke your port chain and lost your port anchor?

A. It drifted right the same way.

Q. Commenced drifting at the same time that you lost that anchor?

A. Well, I can't say what time we lost that anchor.

Q. Did you notice that the chain was hanging loose?

A. I was there at the forecastle head once and I looked at it and couldn't tell whether it was there or not.

Q. Did it look to you as if the chain was hanging down loose? A. Yes, sir.

Q. That was when, just before you commenced drifting?

(Testimony of Theo. Kevister.)

A. Yes. We were alongside of this four-mast schooner when I looked at this chain.

Q. Was that before you struck the schooner?

A. After that.

Q. You first ran against the bow of the schooner, did you? A. Yes, sir.

Q. How long did it take you to drift down onto the "Stimson"?

A. Well, I can't tell; about an hour.

Q. About an hour, you think?

A. Yes, I think, but I am not certain.

Q. How was the wind? What way was the wind blowing then?

A. It was harder this time when we were close to the four-mast schooner.

Q. Did it blow harder from that time on until you got to the "Stimson"?

A. Yes, there were squalls.

Q. When did the storm commence to get lighter?

A. It got lighter when we were closer to land and the anchor caught.

BUSTAV VON FRIEBEN, being called as a witness, being first duly sworn, testified as follows:

(Examination in Chief by Mr. SACHSE.)

Q. How old are you?

A. Twenty years and a half.

Q. How long have you been to sea?

(Testimony of Bustav Von Friebeu.)

A. Five years.

Q. Are you an able seaman on the "Rickmers"?

A. Yes, sir.

Q. Were you on December last? A. Yes, sir.

Q. Were you one of the men who helped put the shackle on the port cable chain? A. Yes, sir.

Q. What kind of shackle did you put on that?

A. We put a manila strap around the chain, and a chain strap around the mast.

Q. How was the wind blowing?

A. At first not so hard, but afterwhile we got a little more wind.

Q. Can you tell us whether it was blowing strong or otherwise?

A. Yes, I think it was blowing very strong.

Cross-examination.

(By Mr. HUGHES.)

Q. When did you shackle this chain?

A. What time?

Q. Yes.

A. I think it was ten o'clock.

Q. Was that before or after you lost your port anchor? A. It was before, I think.

Q. About how long was that before you lost the port anchor?

A. I don't know what time we lost the port anchor; we didn't know until the next morning when we went to heave the anchor up, and we saw it then.

(Testimony of Bustav Von Friebeu.)

Q. How long was it after you shackled this on before your ship commenced to drift?

A. It was fifteen or twenty minutes before; ten or fifteen minutes I think before.

Q. Did you take any of the port chain after you shackled it fast? A. Did I take any of it in?

Q. Yes. A. No.

Q. How much was out at that time?

A. It was a little over forty-five. We put first forty-five on the port chain, and afterwards five fathoms I think went out.

Q. You think five fathoms went out before you shackled it?

A. Yes, a little short of forty-five before that.

Q. When was the compressor split you think, that put five fathoms slack out? The windlass slacked out about five fathoms more?

A. Yes, I think after the tackle broke about five fathoms went out.

Q. That is after this tackle that you are describing. After you put that on that broke? A. Yes, sir.

Q. And that broke how long after you commenced drifting? A. Ten or fifteen minutes.

Q. And as soon as it broke about five fathoms more of the chain slacked out?

A. Not more before we got the tackle on.

Q. Before you got your tackle fast?

A. We got one tackle on there and the hook broke from the tackle and five fathoms went out.

(Testimony of Bustav Von Friebeu.)

Q. And you put on a second tackle?

A. Yes, sir.

Q. And that held all right? A. Yes, sir.

Q. The windlass held the chain all right except that it let out about five fathoms more of the chain?

A. Yes, sir.

Q. There never was any more than that extra five fathoms go out on account of the splitting of your compressor, was there?

A. I don't understand that.

Q. What I mean is you had out forty fathoms of chain on your port anchor? A. Yes, sir.

Q. Then the wooden block of the compressor split?

A. Yes, sir.

Q. And then you put on a tackle and made it fast to your fore mast? A. Yes, sir.

Q. And then the hook of that broke?

A. Yes, sir.

Q. And before you succeeded in getting on another tackle and making it fast about five fathoms of chain slacked out from the windlass? A. Yes, sir.

Q. And then you had out about forty-five fathoms of chain? A. Yes, sir.

Q. And that's all the chain you had out on the port anchor? A. Yes, at this time.

Q. That is what I mean, while you were at anchor there that evening? A. Yes, sir.

(Testimony of Bustav Von Frieбен.)

Redirect Examination.

(By Mr. SACHSE.)

Q. Did you have on any more chain afterwards?

A. Yes, afterwards.

Recross-examination.

(By Mr. HUGHES.)

Q. You slacked out after that on your starboard chain but not on your port chain? A. Yes, sir.

Redirect Examination.

(By Mr. SACHSE.)

Q. Did you slack out on the port chain then?

A. I don't know. It wasn't my lookout there. The captain was there, but I know we slacked more chain on the starboard side. Two times we slacked on the starboard side.

Recross-examination.

(By Mr. HUGHES.)

Q. Were you on deck while your boat was drifting down onto the "Stimson"?

A. I don't know the names of the schooners there.

Q. The one you got fast to; the one that you struck and drifted with? A. Yes, sir.

Q. Were you on deck while you were drifting down onto that one? A. Yes, sir.

Q. It was your watch, was it? A. Yes, sir.

Q. When you were getting down near to that schooner, the "Stimson"?

A. It was the first schooner, I think.

(Testimony of Bustav Von Friebeu.)

Q. The second one, when you were getting down to the one that you last collided with, what, if anything, was said on your ship about that?

A. Nothing.

Q. Your captain or mate didn't sing out anything to the men on board of the schooner?

A. Yes, told them to slack more chain and the fellow said they had no more slack.

Q. What else was said, anything?

A. I don't know. I didn't hear anything else.

Q. You didn't hear anything else? And you didn't pay any attention?

A. (No response.)

Q. Do you remember anything else that they said to your captain or to your mate?

A. No, sir.

Redirect Examination.

(By Mr. SACHSE.)

Q. Did you see the captain of the tugboat at Port Townsend? A. Yes, sir.

Q. Was it the same captain of the tugboat who was around there the next morning?

A. Yes, sir.

Q. Of the Tacoma? A. Yes, sir.

Q. The same man? A. Yes, sir.

Witness excused.

It is stipulated between counsel that the certificates for the anchor chains are made on the same date as the anchor certificates introduced in evidence herein, to wit, November 30th, 1887, made by the same superintendent, and that they recite that said chains are each stud link chains, having a total length of one hundred and thirty-five fathoms; weight of two hundred sixty-three hundredweight; length of link, twelve and three-quarter inches; breadth of link, seven and three-sixteenths inches; size or diameter of link, two and one-sixteenth inches; breaking strain applied by Machine No. 4, give it of each length of fifteen fathoms one hundred seven and one-tenth tons; tensile strain applied by Machine No. 5, seventy-six and five-tenths tons.

The certificate as to each anchor chain is the same, and recites that it is intended for the ship "Robert Rickmers."

Claimant's Exhibit No. 2.

No. —.

(J. A. M.)

BUREAU VERITAS.

(Societe Anonyme)

International Register for Classification of Vessels.

Established 1828.

Certificate of

Classification.

Veritas.

Iron or Steel Vessels—Special Survey.

This is to certify that the German four mast ship "Robert Rickmers," Rubarth, Master, Rickmers, Reismuhlen

Rheiderei Schiffbau A. G. Greenock by Russels & Co. in the year 1888, belonging to the port of Bremerhaven, has been surveyed and examined by the undersigned Surveyor to the Society and found to be in good and efficient state, and fit to carry dry and perishable cargoes.

The said vessel built under Special Survey will be entered in the Register-book with the class 3/3 L. I. I. in the first Division.

This certificate is granted under the conditions of the articles 5 and 6 of the Rules of which the following is an extract:

Article 5. To retain their character, vessels classed in the first division must be subjected to a complete survey at least once every four years.

Article 6. 2. All iron or steel vessels must have their bottom examined at least once every year; 8. In case of damage or stranding, the vessel must be surveyed.

When these requirements are not attended to the class is liable to be withdrawn.

Delivered by authority of the Administration.

Le Havre, the 26th April, 1898.

L' Ingenteur du Veritas au Havre,

J. HALATHIEN.

(Marginal notes.) The annual bottom surveys prescribed by Sec. 2 of Article 6 shall be entered on the present certificate which is to be exchanged for a new one at the time of the periodical survey (Articles 5 and 6 of the Rules).

Bureau Veritas International Register.

Bureau Veritas.

Experts Du Havre.

Paris, 1828.

Registre International.

No. 1.

Certified for survey in drydock. Bottom and rudder in good condition. Division and class confirmed. At Bremerton, the 13 October, 1899.

[Seal]

A. YOTTSCHÉ.

No. 2.

Certified for survey in drydock. Bottom scraped and painted and rudder lifted. Continuation of class confirmed at Hall, the 12th February, 1901.

[Seal]

H. F. FOURNEY.

No. 3.

Certified for survey. Afloat after repairs to rigging and sails; slight repairs to bulwarks; class confirmed at Tacoma, the 20 Jan., 1902.

[Seal]

E. BIONDI.

[Title of Court and Cause.]

Depositions.

Be it remembered that, pursuant to the stipulation herein contained, before me, N. W. Bolster, a notary public in and for the State of Washington, duly commissioned to administer oaths, etc., at my office, room 200 Burke Building, Seattle, King County, Washington, on this 26th day of April, A. D. 1902, at the hour of ten A.

(Deposition of William Kindlen.)

M., the libelant appeared by its attorneys, Messrs. Struve, Allen, Hughes & McMicken, the respondent ship appeared by its attorneys, Messrs. James H. Ashton and W. L. Sachse, and it is agreed by and between the parties hereto that the testimony of witnesses produced by the libelant may be taken before N. W. Bolster at this time without other notice or stipulation, and when transcribed the same may be returned to the Court as the depositions of the several witnesses, to be used upon the hearing and trial of said cause, and it is further agreed that the signatures of the witnesses are hereby expressly waived:

WILLIAM KINDLEN, produced as a witness in behalf of libelant, being first duly cautioned and sworn, testified as follows:

Q. (Mr. HUGHES.) State your name.

A. William Kindlen.

Q. You are a master mariner, are you?

A. Yes, sir.

Q. How long have you been a master mariner?

A. Thirty years.

Q. You are the master of the schooner "Mildred"?

A. I am the master of the schooner "Mildred."

Q. How long have you been the master of the "Mildred"?

A. Since she was launched four and a half years ago.

Q. How long have you been master of a sailing vessel?

A. Master of a sailing vessel thirty years, since 1872.

Q. Where was your ship at anchor on December 25th, 1901?

A. Salmon Bay.

(Deposition of William Kindlen.)

Q. You mean off the mouth of Salmon Bay, what is called Shilshoal or Salmon Bay?

A. Well, I never knew that until I saw it on the chart; I thought Salmon Bay was outside; it seems to me here it is inside; I always called that Salmon Bay.

Q. Were you on board the "Mildred" on the evening and night of December 25th, 1901? A. No, sir.

Q. Where were you?

A. I was ashore in Ballard.

Q. You were about ready to go to sea?

A. No, sir, we did not go to sea until the 8th of January.

Q. You did not see the "Robert Rickmore" at anchor there? A. No, sir.

Q. She did not come into anchor until after you had gone ashore? A. No, sir.

Q. And she was gone when you returned on the morning of the 26th? A. Yes, sir.

Q. What other ships were anchored near the "Mildred"?

A. The schooner "Corona" and the schooner "Stimson."

Q. I will ask you to designate on this map "Respondent's Exhibit No. 1," the position of the "Mildred," the "Corona" and the "Stimson," and I will ask you to state whether the locations marked on exhibit No. 1 as follows: "M, C, and S," represent the positions of the schooners "Mildred," "Corona" and "Stimson," at anchor there on the 25th day of December.

(Deposition of William Kindlen.)

A. The positions as near as you can possibly get them.

Q. The letter "M" represents the location of the "Mildred"? A. Yes, sir.

Q. And the letter "C" represents the location of the "Corona"? A. Yes, sir.

Q. And the letter "S" represents the location of the "Stimson"? A. Yes, sir; that's right.

Q. You do not know what was the position of the "Robert Rickmore"? A. No, sir.

Q. And you do not know anything about the collision that occurred on the night of December 26th except from hearsay?

A. That is all; just what I heard from the mate.

Q. When you got on board the "Mildred" did you find any damage had been done to her?

A. Yes, sir.

Q. What was it?

A. The jib-boom was carried away and all our lashing planks taken away and the rigging damaged to a certain extent.

Q. Do you know what did that?

Mr. SACHE.—We object to that as irrelevant, immaterial and incompetent.

A. The "Robert Rickmore."

Q. I will ask you whether the "Robert Rickmore" settled with you for it?

Mr. SACHSE.—We object as irrelevant, immaterial and incompetent.

(Deposition of William Kindlen.)

A. She settled.

Q. (Mr. HUGHES.) Who was on duty on the "Mildred" on the evening and night of December 25th when you were ashore?

A. John Knudson, the mate.

Q. And where is he now?

A. He left in San Francisco on the 6th of April; I gave him a permit to go to the hospital, he was sick; that is all I know of him—I have not seen him since.

Cross-examination.

Q. (Mr. SACHSE.) What time of day did you leave the schooner on the 25th of December?

A. I left on the evening before.

Q. Do you know of your own knowledge of your schooner and the other schooners being anchored in those positions on the 25th?

A. Yes, I left them all just in that position here on the evening before—on the 25th—on the evening of the 24th.

Q. And how were they anchored, with one or two anchors?

A. My vessel was anchored on one anchor with 65 fathoms of chain.

Q. And the others?

A. I don't know how they were anchored, only the position—I know the position is correct as near as you can do it now—how much chain they had out I do not know. Before I left I gave her all the chain we had in

(Deposition of William Kindlen.)

the chain locker so that there would be no trouble about it afterwards.

Q. You do not know then whether or not your schooner also drifted during the night?

A. No, sir, the schooner never drifted; she was in the same position that I left her in.

Q. When you got back?

A. When I got back.

(Testimony of witness closed.)

JOHN EDWARDS, produced as a witness in behalf of libelant, being first duly cautioned and sworn, testified as follows:

Q. (Mr. HUGHES.) State your name.

A. John Edwards.

Q. What is your business?

A. I am a sailor.

Q. And able seaman? A. An able seaman.

Q. How long have you been an able seaman?

A. I have been about nine years going to sea.

Q. Where were you working on that vessel on the 25th of last December?

A. On the schooner "Mildred."

Q. Where was the schooner "Mildred" at that time?

A. She was lying to anchor at what we call Salmon Bay, out in the stream opposite Ballard.

Q. What vessels were anchored near you?

A. The nearest?

Q. Near you on the 25th?

(Deposition of John Edwards.)

A. Well, the schooner "Stimson" and the "Corona."

Q. Which way was the "Corona" from you?

A. She was on our port side.

Q. And which way was the "Stimson" from you?

A. She was lying stern like in a straight line.

Q. Now, were you there when the "Robert Rickmers" came in? A. Yes, I was.

Q. Along some time between four and five o'clock in the afternoon?

A. Something like that, I think.

Q. Was that on the 25th of December?

A. Christmas Day.

Q. Where did she come to anchor?

A. She anchored pretty near between us and the "Corona," after she had the chain slacked out a little she pretty near drifted on the top of the "Corona," and then she swung clear a little.

Q. And then after she drifted towards the "Corona," did the tug take her up and carry her forward again and anchor again?

A. She was right ahead of us, a little bit on the port bow.

Q. That is the second time she anchored?

A. Yes, sir.

Q. And that was when she finally came to anchor then that she was ahead of you and on the port bow?

A. Yes, sir; she was ahead of us—both of us pretty near east of the "Corona," because we were lying pretty near in the same condition.

(Deposition of John Edwards.)

Q. You mean that she was inshore from you, was she, the "Robert Rickmers" was inshore from you towards the shore? A. Well, she was ahead of us like.

Q. Well, that would make her nearer the shore, wouldn't it?

A. Well, yes, it would if she was ahead of us.

Q. Now, were you called on deck that night?

A. Yes, I was called on deck; I think it was between nine and ten, I can't say for sure, but something like that.

Q. What happened then?

A. Well, she drifted on the top of us.

Q. The schooner "Mildred."

Q. What drifted on top of you?

A. That ship.

Q. The "Robert Rickmers"? A. Yes, sir.

Q. Did anything happen to your ship?

A. Well, she took a jib-boom out of us—out of the schooner "Mildred."

Q. What did she do?

A. She damaged some rigging.

Q. What happened then?

A. And then she went clear of us and drifted on the port side of us, and the last I saw of her she was alongside of the "Stimson," and both of them drifted away and they disappeared, I could not see them any more—that is the last I saw of them.

Q. What kind of weather was it then?

A. It was blowing very hard.

(Deposition of John Edwards.)

Q. Was the wind off shore?

A. The wind was off shore; yes, sir.

Cross-examination.

Q. (Mr. SACHSE.) You have been a sailor in deep water vessels during your time?

A. During the time—

Q. During your nine years' experience?

A. Yes, sir; two years.

Q. How often have you been in this Sound during that time?

A. During the time I was a sailor in deep sea?

Q. Yes.

A. I was not here at all then—I have been on this coast for seven years, sailing on this coast.

Q. Is this the first time you have ever anchored in Salmon Bay?

A. No, sir, I have been there about six or seven times loading.

Q. What time was it when the "Robert Rickmers" first began drifting and came near the "Corona," do you remember?

A. Well, it was about between four and five.

Q. Was that shortly after the "Robert Rickmers" was first anchored? A. Yes, it was.

Q. Did you say the wind was blowing?

A. The wind was blowing very strong—I am not sure which wind it was—I guess it was southward.

Q. A southerly wind—blowing a gale, wasn't it?

(Deposition of John Edwards.)

A. Well, it was blowing very hard.

Q. Did the "Robert Rickmers" people say anything to you when they came near you?

A. Well, they sung out to us to slack our chain, but we had no chain to slack out—we had all our chain out.

Q. Didn't they sing out to you to port your helm too?

A. Well, sir, I did not hear that, I am not sure.

Redirect Examination.

Q. (Mr. HUGHES.) Did your boat drift any?

A. No, sir, not that I know of.

Q. You had only one anchor out?

A. We had only one anchor out.

Q. (Mr. SACHSE.) How big a schooner is the "Mildred?"

A. Well, sir, she is four hundred eleven tons.

Q. What size anchor did you have out, what weight anchor?

A. I am not sure what weight anchor it is.

Q. You had out how many fathoms of chain?

A. Between sixty and and seventy, I think.

(Testimony of witness closed.)

May 19, 1902.

Continuation of proceedings pursuant to adjournment.

Present: MAURICE McMICKEN, Esq., of Proctors for
Libelant.

HAYDEN, Esq., of Proctors for Claimant.

Captain JOHN A. ANDERSON, produced as a witness in behalf of libelant, being first duly cautioned and sworn, testified as follows :

Q. (Mr. McMICKEN.) How old are you, Captain?

A. I am thirty-eight.

Q. What is your business, Captain?

A. I am a seafaring man.

Q. How long have you been going to sea?

A. I have been going to sea twenty years.

Q. What vessel are you now in command of?

A. The schooner "Corona."

Q. Where does she said from?

A. San Francisco.

Q. How long have you been master of her?

A. About four years and a half.

Q. Captain, where was the schooner "Corona" on the afternoon and night of last Christmas?

A. In Ballard, Salmon Bay, rather.

Q. Anchored off Salmon Bay? A. Yes.

Q. How long had she been there?

A. I had been there three days, two or three days, I really cannot remember without I get the log-book; about three days, I should judge.

Q. Were you loaded or light? A. I was light.

Q. Do you remember the "Robert Rickmers," or a four-masted bark being towed in and anchored in there that afternoon? A. Yes.

Q. About what time was it she anchored there first?

A. I should judge about two or half-past two in the afternoon.

(Deposition of Captain John A. Anderson.)

Q. How was the wind at that time, Captain?

A. It was about south or south southwest, varying two or three points.

Q. South or south southwest?

A. South or south southwest, varying two or three points.

Q. And you, of course, were headed into the wind?

A. I was headed to the wind.

Q. How many anchors had you down at that time?

A. I had only one anchor and 45 fathoms of chain.

Q. Now, from your vessel, where did the "Robert Rickmers" anchor the first time?

A. She anchored—

Q. I do not mean by courses and distances, but off which bow?

A. She anchored ahead of me a little on the star-board bow, if anything, I should judge about an eighth of a mile ahead of me, or something like that.

Q. And you were anchored off Shilshoal Bluffs?

A. Yes.

Q. And about what distance between West Point and the mouth of Salmon Bay?

A. Well, I should judge I was about three-quarters of a mile or a mile off the lighthouse, that brings me about a quarter of a mile off shore from where I was lying.

Q. And how far from the mouth of Salmon Bay?

A. About half a mile.

Q. Where was the schooner "Mildred" anchored as compared with your vessel?

(Deposition of Captain John A. Anderson.)

A. Well, she was anchored abreast of me, beyond the outside.

Q. On your starboard side?

A. Yes, on my starboard side.

Q. And where was the schooner "Stimson" anchored?

A. She was anchored astern of me about a quarter of a mile, a little on the starboard quarter, if any.

Q. What happened when the "Robert Rickmers" was first anchored?

A. Well, she commenced to drag and was just getting on the top of me. I should judge she was about three or four feet off when I got a staysail on—I had it up by that time and my foresail started to pay off, and he got on the outside of me.

Q. You sheered your vessel off shore?

A. I sheered my vessel off shore.

Q. With your forestaysail?

A. With my forestaysail. I backed up to the wind and the little wind there was throwed me over, and then I dropped the other anchor.

Q. Then you dropped your port anchor?

A. I dropped my port anchor and she stood there.

Q. And then what was done with the "Robert Rickmers"?

A. Well, he seemed to hang on for awhile and then the tow boat came and got his hawser in, and when he had his hawser in he gave the hawser to the "Robert Rickmers" and drew her up again a little more ahead of the

(Deposition of Captain John A. Anderson.)

"Mildred," about one-eighth of a mile, or something like that, I should judge.

Q. And could you see then how they anchored the "Robert Rickmers" at that time?

A. I could see there was a little spread on them.

Q. She put down both anchors?

A. She had both anchors out.

Q. What happened between that time and nine or ten o'clock at night when the "Robert Rickmers" dragged the second time?

A. Well, it was blowing, coming in puffs, strong puffs and then a little blow.

Q. Did the "Mildred" and the "Corona" and the "Stimson" all hold their positions?

A. Held, all held—everybody was holding, nobody moving.

Q. What time did the "Robert Rickmers" commence to drag the second time?

A. So far as I could judge it was about eleven o'clock or somewhere along there.

Q. Did you see her when she commenced to drag?

A. No, sir, I didn't see her when she commenced dragging, but the mate of the "Mildred" sung out to me "Corona, you are dragging."

Q. The "Robert Rickmers" I am getting at—what time did you know that the "Robert Rickmers" commence to drag the second time?

A. Well, it was about eleven o'clock when she was abreast of me—he must have dragged about the eighth

(Deposition of Captain John A. Anderson.)

of a mile or something like that when I noticed him and then—

Q. She cleared you when she dragged the second time?

A. She cleared me the second time—that was the time she took the job off the “Mildred.”

Q. Then could you see her drag after that, down on the “Stimson”?

A. Yes, I watched until about two o'clock that night—I didn't go to bed then.

Q. Could you see the collision between the “Robert Rickmers” and the “Stimson”?

A. Yes, sir; I could see her all the time; I could not see when the jib-boom came down, but I could hear the crash; it looked like to me—I was watching her with my glasses—it looked the same as she was going to clear, and then backed off a little and then she ran ahead and then she fumbled and I heard the crash afterwards.

Cross-examination.

Q. (Mr. HAYDEN.) The second time, Captain, after the “Robert Rickmers” commenced to drag, you say about eleven o'clock, did she come between the “Mildred” and the “Corona,” and on what side of the “Mildred” and on what side of the “Corona”?

A. Yes, she went on the starboard side of the “Corona” and on the port side of the “Mildred.”

Q. What time did the “Robert Rickmers” drop her two anchors?

A. About three or half-past three, or something like

(Deposition of Captain John A. Anderson.)

that. It took them about an hour and a half to get them up, as near as I can remember.

Q. That was after she dragged the first time?

A. Yes.

Q. Then she dropped both of her anchors?

A. Then she dropped both of her anchors.

Q. Do you know the size of her anchors?

A. No.

Q. How far was the "Mildred" from the "Stimson"?

A. Well, about a quarter of a mile, perhaps less.

Q. You say the wind blew hard on that night?

A. Yes, blowing hard.

Q. How hard was it blowing?

A. Well, it was a gale.

Q. Was it cloudy? A. Partly cloudy.

Q. Was it raining? A. At times.

Q. Was it raining when the "Robert Rickmers" dragged past you?

A. I think it was—I had my oiled clothes and my rubber boots on when she came down so it was raining at times.

Q. You said you were lying down when the "Robert Rickmers" passed you the second time?

A. Yes, I was lying out in the cabin, but I was not sound asleep. As I could hear the mate sing out on the "Mildred," he sang out that I was dragging.

Q. That the "Corona" was dragging?

A. That the "Corona" was dragging, yes; and when

(Deposition of Captain John A. Anderson.)

I got up then the "Robert Rickmers" was right in between us.

Q. Did you look to see if the "Corona" was dragging or not?

A. Yes, the first thing I went forward and payed out chain and when I had all the chain out on the anchors she hung on.

Q. How long did it take you to pay out your chain?

A. Well, I should judge it took about ten or fifteen minutes.

Q. To make it all fast, you payed it all out and made all fast inside of fifteen minutes?

A. Yes, ten fathoms of each chain.

Q. Did you have two anchors down?

A. I had two anchors down, sixty on one and about twenty on the other.

Q. Fathoms?

A. Yes, and I payed out the other forty and then she hung on.

Q. You had sixty out on the other chain?

A. I had sixty out on both chains, and then she hung on.

Q. What is the tonnage of the "Corona"?

A. Three hundred and ninety-four tons.

Q. Is she a bark, or a ship, schooner?

A. She is a schooner; three-topmast schooner.

Q. And what sort of rig was the "Corona"?

A. She is a three-topmast schooner.

(Deposition of Captain John A. Anderson.)

Q. I mean the "Robert Rickmers"?

A. She is what I call a four-masted bark.

Q. Was the "Robert Rickmers" light or heavy loaded? A. She was in ballast.

Q. She was light? A. Yes.

Q. How long did it take the "Robert Rickmers" after she was abreast of you to drag back to the "Stimson"?

A. It took her about, I should judge, a half hour, or something like that.

Q. With a southerly wind, the wind gets a clean sweep for how many miles down the Sound?

A. Well, it gets a clean sweep from where we were down to Richmond Beach.

Q. I mean up this way towards Blakely Rock and Blakely harbor?

A. It gets a clean sweep, I should judge, from here to that point (showing on the chart), Restoration Point, at the southern end of Blakely.

Q. How many miles is that?

A. I should judge about four or five miles, I guess, about four miles and a half.

Q. Now, the wind blowing from the south would blow away up here and straight down without any interruption, it would blow from here; how far in on the Sound would the wind have a clean sweep blowing in a southerly direction to where your ships were?

A. Right around to Richmond Beach.

Q. Do you know how far that would be?

(Deposition of Captain John A. Anderson.)

A. Well, it is about, I should judge, about three miles or something like that, three or four miles.

Q. The wind would have at least seven or ten miles sweep, a straight blow from the southerly, without hitting anything at all until it hit the ships, without anything to interfere with it? A. Yes.

Q. Could you see the anchor chains of the "Robert Rickmers" as she was going by the "Corona"?

A. No, I don't think I could see the chains.

Q. Could you make out men standing on the deck?

A. No.

Q. It was not foggy on that night?

A. No, it was partly cloudy.

Q. And it was raining?

A. Raining at times, yes, heavy showers and it was blowing in puffs, strong puffs; sometimes it was not blowing strong and after a while then it would come one of these strong puffs.

Q. And it was during one of those strong puffs that the "Robert Rickmers" was dragging?

A. Yes, sir.

Q. And the wind at that time reached the velocity of a gale? A. Yes, sir.

Q. You do not know the size of the anchors that the "Robert Rickmers" had, do you?

A. No, sir, I could not tell you what anchor he had.

Q. Did you stand and watch the "Robert Rickmers" drift constantly from the time she passed the "Corona" until she struck the "Stimson"? A. Yes, sir.

(Deposition of Captain John A. Anderson.)

Redirect Examination.

Q. (Mr. McMICKEN.) You have stated in your direct examination that she fouled the "Mildred" first before she drifted up towards the "Stimson"?

A. Well, I didn't say that she fouled the "Stimson."

Mr. HAYDEN.—I object to this as irrelevant, immaterial, incompetent as to what she did with the "Mildred" or any of these boats.

A. (Continuing.) She took the jib-boom off her and she took it so quick. I didn't hear the crash and didn't pay any attention and I didn't know that she took the jib-boom off until the morning.

Q. In reference to this sweep of the southerly wind; did you take into consideration the lea of West Point; is it not a fact that these vessels were all anchored in the lea of West Point?

A. Yes, they were all to the leeward of West Point, they were all inside there.

Q. How was the water that night—was the water smooth or rough?

A. Well, it was rough; it was so rough my sailors were ashore and they couldn't come out—they were right in the mouth of the creek and they turned back again with the boat.

Q. But West Point breaks the sea, does it not, from the southward in there?

A. Yes, sir, it does bear the sea, but still there is

(Deposition of Captain John A. Anderson.)

such a strong wind as that it makes it more or less choppy.

Recross-examination.

Q. (Mr. HAYDEN.) Does West Point break the wind?

A. No, it don't break the wind; but the sandspit there breaks the sea.

Q. I understood from your testimony that you did not see the "Robert Rickmers" strike the "Mildred," but that you know she struck her because you saw the damage that was done to the "Mildred" the next morning; is that right?

A. Yes, sir, I didn't see her foul the "Mildred."

Q. The "Mildred" was lying somewhat south of the "Corona," wasn't it?

A. To the eastward of the "Corona."

Q. The "Mildred" was lying to the east and to the south of the "Corona"?

A. Yes, the "Mildred" was lying to the west and—

Q. To the east and to the north—or to the west or north, which ever you want to say—I want to find out whether she was lying north of you or south—was the "Mildred" lying north of your ship?

A. The "Mildred" was lying to the westward or southward.

Q. Of your ship? A. Yes, sir.

Q. Then the "Robert Rickmers" struck the "Mildred" before she came to your ship?

(Deposition of Captain John A. Anderson.)

A. She never touched me at all.

Q. She struck the "Corona" before she came to your ship?

A. She struck the "Mildred"—she never touched me at all.

Q. The "Robert Rickmers" struck the "Mildred" before she came to your ship?

A. Yes, sir; but she never came alongside me—she went between.

Q. She struck the "Mildred" before she passed your ship?

A. Yes, sir.

(Testimony of witness closed.)

[Title of Court and Cause.]

Depositions.

Be it remembered that, pursuant to the stipulation herein contained, before me, A. C. Bowman, a notary public in and for the State of Washington, duly commissioned to administer oaths, etc., at my office, Room 200, Burke Building, Seattle, King County, Washington, on this 7th day of November, A. D. 1902, at the hour of 2 o'clock P. M., the libelant appeared by Mr. E. C. Hughes, of proctors for libelant, and the respondent appeared by Mr. Sachse, of proctors for respondent, and it is agreed by and between the parties hereto that the testimony of witnesses produced by the libelant may be taken before A. C. Bowman at this time without

other notice or stipulation, and when transcribed the same may be returned to the court as the depositions of the several witnesses, to be used upon the hearing and trial of said cause, and it is further agreed that the signatures of the witnesses are hereby expressly waived.

Seattle, November 7th, 1902, 2 o'clock P. M.

Continuation of proceedings pursuant to agreement.

Present: Mr. HUGHES, Proctor for the Libelant.

Mr. SACHSE, Proctor for the Claimant.

ROBERT MORAN, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. HUGHES.) Your name is Robert Moran?

A. Yes, sir.

Q. What is your business?

A. Shipbuilder.

Q. How long have you been engaged in that business?

A. Fifteen years.

Q. In the city of Seattle? A. Yes, sir.

Q. You are familiar with the repairing of ships?

A. Yes, sir.

Q. And the cost of repairing them?

A. Yes, sir.

Q. Are you acquainted with the construction of ships?

A. Yes, sir.

Q. And the value of ships? A. Yes, sir.

Q. Are you one of the appraisers of the four-masted

(Deposition of Robert Moran.)

schooner "Stimson," which was injured in a collision on December 25th, 1901, in collision with the German bark "Robert Rickmers"? A. Yes, sir, I was.

Q. Who was associated with you in making the appraisalment of the damages?

A. Captain Burns and Mr. Hall.

Q. Did you make a survey and appraisalment of the injury to the ship caused by that collision?

A. We did.

Q. Do you remember when it was that you made that examination?

A. Last January sometime, the first of the year.

Q. What did you do?

A. We went over on board the ship lying in the harbor there and examined her throughout, made specifications and the report.

Q. I will ask you to examine this report and state whether this is the report and whether it contains the report and specifications made by you three appraisers at that time? A. Yes, sir, that is the copy.

Q. The signature to this document is your signature? A. That is my signature.

Q. Now, I will ask you if the report of the survey contains the correct description of the damage which you found upon surveying and examining that ship?

A. Yes, sir.

Q. You state in that report that you estimate the damages to the ship at \$8,500 and \$1,000 for discharging

(Deposition of Robert Moran.)

and reloading the lumber in the ship. I will ask you what you have to say as to whether that is a reasonable and fair estimate of the damages to the ship and the expense of unloading and reloading?

A. Well, that is a reasonable estimate for the cost of repairing the ship, as well as she could be repaired. I do not really consider that it makes the ship as good as she was before she was injured.

Q. That estimate then was an estimate of what it would cost to make the repairs that you specified in the survey? A. Yes, sir.

Q. Was that the reasonable estimate of the cost of these repairs? A. I think so.

Q. Now, why did you make an estimate there in respect to the unloading and reloading?

A. It was necessary to discharge the cargo in order to make the repairs.

Q. And then to reload again afterwards to put her in the condition she was at the time of the collision?

A. Yes, sir, that is right.

Q. Was that thousand dollars a reasonable estimate of that cost?

A. I think it was reasonable, as I remember it, she had about 500,000 feet of lumber to take out and put back.

Q. Now, you have stated that this estimate of \$8,500 is an estimate of what it would cost to repair, as far as she could be repaired, estimating that such repairs were

(Deposition of Robert Moran.)

made, what in your opinion would be the fact as to whether the ship would be as valuable as she was before the collision?

A. Well, that would be impossible, it could not be as valuable.

Q. What in your opinion, would be her damages then after being repaired as fully as would be practicable, in accordance with your survey and in excess of the cost of making such repairs?

A. The damages this ship sustained and the depreciation, after the repairs had been made in accordance with these specifications, I should judge would be probably ten per cent.

Q. Ten per cent of her value?

A. Ten per cent of her value in my judgment.

Q. In other words her permanent damages, which could not be overcome by any repairs put upon her, would be ten per cent in addition to the cost of repairing her as fully as she could be repaired.

A. That is my judgment.

Q. What would that amount to, in your opinion, in other words, what would have been the original value of the ship before the collision?

A. Well, I am not advised as to the exact value of the ship, but I presume her value new would be probably \$50,000 or \$60,000 dollars. I did not examine her particularly as to her exact value new. So that would make from 5 to \$6000=10%, permanent damages.

(Deposition of Robert Moran.)

Q. Did you furnish any labor and material for this ship? A. I think we did.

Q. Moran Brothers Company? A. Yes, sir.

Q. Examine this bill and state whether that is for any labor or materials furnished by you for the repair of the schooner "Stimson" from these damages?

A. Yes, this bill is correct.

Q. Labor and materials were furnished for the repairs of this ship in pursuance of this survey?

A. Yes, sir.

Q. Did you receive from Stimson Brothers, the owners of the ship, the amount of this bill \$542.84?

A. It is paid, yes.

Mr. HUGHES.—We offer this bill in evidence.

(Papers received and marked Libelant's Exhibit "C" attached to and returned herewith.)

Mr. HUGHES.—We offer in evidence the survey made by Messrs. Moran, Burns & Hall.

(Paper received without objection and marked as Libelant's Exhibit "D" attached to and returned herewith.)

Cross-examination.

Q. (Mr. SACHSE.) This statement attached to your report does that contain or refer to the damages to the ship?

A. It specifies the damages, that is written there.

Q. Well, you have no knowledge, have you, of your

(Deposition of Robert Moran.)

own, whether any of these damages have been sustained prior to this time by this ship?

A. I haven't any knowledge of that, no.

Q. In making up this statement as to damages you assumed that everything was in shipshape before the collision, did you?

A. Well, the damage to the vessel as we found her, the ship could not have been in a seaworthy condition and have been in the shape that she was in, or any part of the damage that she had sustained, when we surveyed her. It was something in the way of a collision that had broken her rigging and damaged her in that way. It was not anything in the way of deterioration from use or from age or anything of that kind. It was a violent contact that she had had with something that was the cause of the damage as we surveyed it.

Q. Well, all these items of damages then in this statement covered damages to the ship, newly made damages, that is what you mean?

A. Yes, sir, that is the appearances that the vessel had then when we surveyed her.

Q. And in this report, did you not take into consideration anything that would have been broken, any of these various articles, prior to that time?

A. Of course, as far as that goes, as I said a little while ago, I do not know anything about how this thing happened, I surveyed that ship along with these gentlemen here and we reported on the condition we found her in.

(Deposition of Robert Moran.)

Q. Was all this damage apparently new damages?

A. It was all new.

Q. Can you take this bill of yours and check off the particular damages that you repaired, as shown by this report?

A. I think so.

Q. I wish that you would do so.

A. In connection with the report, it may take a little time to do it.

Q. Indicate by a check mark by your initials, the items which are contained in the statement attached to your report of survey.

A. What we call the specifications.

Q. Put your initials opposite each item, Mr. Moran. (Witness does so.)

A. Now, that bill particularly refers to the repairs of the windlass—

Q. Anything else?

A. And the balance of it is for rigging and chain plates and so forth.

Q. Any other repairs that you made on the ship?

A. No, that is all that is described in there, the chain plates and the rigging and the iron and the windows.

Q. Did you make any other repairs to the ship besides these shown on the bill?

A. I do not know whether we done some work for Mr. Hall or not. It runs in my mind that we did although I could not swear to that.

(Deposition of Robert Moran.)

Q. They have two items in this statement attached to your report, repairs to shrouds.

A. That probably applies to this—you see this is all new, you see this is all referring to the chain plates and that is the same thing. Now, in checking this bill I want to say that I do not bind myself to the statement that everything in that bill has been checked on this one, because there are things described there as chain plates, against the item here that does not call for a chain plate, but it may include the chain plate—you see the point? So in checking the bill I do not undertake to say that all the items on that bill are represented by the check marks that I have put on Specification “D.”

Q. You mean to say that there may be items in that bill of \$542, in addition?

A. I mean to say this, if you will excuse me, that the work and material described in this bill, for instance, a chain plate—a turn buckle that has been repaired or renewed cannot be located in this specification by me absolutely correct.

Q. But it may be in this statement for all you know?

A. Well, I know it is in this work. I know it is in this work (referring to Exhibit “D”); there is no question about it, but I would not undertake to say in checking these items and be positive that that particular item in that bill was in the particular items that I have checked here on this specification, but I want it thoroughly understood that everything that is described in

(Deposition of Robert Moran.)

this bill was a part of the repairs on that ship under these specifications.

Q. Did you make any repairs to the jib-boom?

A. I could not say about that. We may have done some iron work, there may be some iron work described on that bill that relates to the jib-boom.

Q. Could you tell from the bill?

A. I could not say positively by reference to the bill.

Q. How about the martingale that was broken?

A. I could not say about that either. To explain that I will say if you will look over this bill you may find repairs to turn buckles and there might be a turn-buckle in the martingale, or something of that kind which could not be particularly located in these specifications.

Q. Well, your bill is for \$542 and some odd cents. Would you estimate the balance of the repairs to that ship at \$9,000?

A. The repairs, the cost of the repairs to the ship were estimated by the appraiser at \$8,500.

Q. Well, would you estimate the balance of the repairs at \$8,000?

A. Yes, so long—this transaction was no part of that estimate at that time. As I understand it I am testifying now as to what appears from this bill—

Q. What I am trying to get at is this. You have a bill in there for \$542 and odd dollars for repairs. Now,

(Deposition of Robert Moran.)

I want to ascertain from you whether the balance of the repairs on the ship—

A. It seems to me this is simply a problem in subtraction.

Q. I want to get at these items by this report?

A. What do you want me to say?

Q. I want you to say if the balance, whether or not the balance on the repairs to that ship would amount to \$8,000?

A. It would be the difference between \$542.82 and \$8,500, as I understand it.

Q. You made none of the other repairs, as far as you know?

A. I would not positively say that, as I said a little while ago. I think we done some iron work for Mr. Hall but I would not be certain about it.

Q. Have you personal knowledge of the repairs that were made on that ship?

A. I have personal knowledge with everything in connection with my business.

Q. In the repairs on this ship?

A. Yes, sir, as far as that work here is concerned.

(Testimony of witness closed.)

Captain H. K. HALL, a witness called on behalf of the libelant, being duly sworn, testifies as follows:

Q. (Mr. HUGHES.) What is your business?

A. I am a shipbuilder.

(Deposition of Captain H. K. Hall.)

Q. Where do you conduct your business?

A. At Port Blakely.

Q. How long have you been engaged in that business, Captain? A. Fifty years.

Q. Have you ever been master of sailing vessels?

A. No, sir.

Q. You are acquainted with the handling and operation of sailing vessels? A. Yes, sir.

Q. As well as the building and construction of them and the repairing of them? A. Yes, sir.

Q. And the value of them? A. Yes, sir.

Q. I will ask you if you are the H. K. Hall, who in connection with Robert Moran and F. J. Burns, made a survey and appraisalment of the damages to the schooner "Stimson" on the night of January last?

A. I am.

Q. State in a general way what you and the other gentlemen did in making that survey and what you found there?

A. Well, we visited the ship as she laid off in the stream here and examined all the damages that had been done to her, as far as we could see and estimated the cost of the repairs for that damage, as near as we could approximate.

Q. Will you describe in a general way, captain, the character or nature of the damages that you found there?

A. Well, we found two of the masts were ruined, the deck was ripped up, the keelson was split, her rails

(Deposition of Captain H. K. Hall.)

were torn off, her rigging was torn off on one side the whole length of the ship. The quarter chocks were torn up and the quarter rail was carried away, the wheel gear and so forth.

Q. I will ask you if in your survey you described the damages which in your opinion were necessary to be repaired? A. We did.

Q. I will ask you also whether you made an appraisalment of what it would cost to repair that ship, so far as it was practicable to repair it?

A. We did.

Q. Examine this document and state whether that is your signature to this appraisalment and survey?

A. Yes, sir, that is right.

Q. Now, state, Captain, whether the damages described in the survey are correctly described as you found them there, upon your examination?

A. They are.

Q. You may state also, Captain, whether the estimate by you of the extent of these damages, to wit, \$8,500 for the repair of the vessel and \$1,000 for discharging and reloading was a fair and reasonable estimate? A. It was.

Q. I will ask you to state whether there was anything in the condition of that ship to indicate the nature of and cause of the damages you found there, in other words, whether it was wear and tear or whether it came from violent contact with some other object?

(Deposition of Captain H. K. Hall.)

A. They had come from violent contact. The fresh nature of the wreckage showed that it had been recently done.

Q. I will ask you to state whether the repairs of the ship as contemplated by this report and appraisalment would put the ship back in the condition that she was immediately before the collision, which caused these damages?

A. It would not.

Q. Well, why not?

A. Because the strain that had been put upon the vessel, the wrenching and the twisting that was caused by the collision, had damaged that vessel to an extent that could not be replaced by any repairs that could be put upon her.

Q. Would that affect the life of the ship?

A. It would take the vitality I should say of at least 10% out of the vessel.

Q. Now, for making the repairs contemplated by that survey, how much, if any, would you say that that ship was worth less than it was immediately before the collision which caused these damages.

A. Well, I should say she was worth 10% less.

Q. Well, how much in money? You are acquainted with the value of ships of that character, how much would you measure that in money, the damage I mean?

A. Well, I should say about \$6,000.

Q. Did you make any of the repairs upon this ship?

A. I did.

Q. I will ask you to examine this statement of account

(Deposition of Captain H. K. Hall.)

or bill rendered to the master and owners of the schooner "Stimson," and state whether or not that was and is a true and correct statement of the work and materials furnished by you or by Hall Bros. In the repair of the schooner, in pursuance of that survey?

A. I can verify that all these items were furnished by us. There are many small items there that I could not carry in my mind, you know.

Q. But you know these items are correct, do you?

A. I know they are correct. The system we have especially of doing that work is such that it is impossible for us to make a mistake. A man when he takes anything out of the yard, out of the warehouse or the blacksmithshop or anywhere else, it is recorded upon the blackboard when he takes it and the timekeeper takes his accounts right from the board every evening.

Q. Now, the total amount of this bill is \$3,386.37. I will ask you if this was paid by the owners of the schooner "Stimson" to you, Hall Bros. What I want to know is whether the bill was paid?

A. Yes, sir, the bill was paid.

Q. I will ask you whether the bill, the total amount of that bill, and each of the items of it was the reasonable charge for the materials furnished and the labor performed? A. It was.

Q. Was it necessary for the repair of that ship everything that was done by Hall Brothers?

A. Yes, sir, everything.

Q. Captain, you are acquainted with Shilshoal Bay?

(Deposition of Captain H. K. Hall.)

A. I know the location of it, I am not very familiar with the ground out there.

Q. Now, if a vessel were anchored there, a ship, in from thirteen to seventeen fathoms of water, off the south shore, and where the shore was sloping out to the north away from shore, or the bottom was sloping to the north away from the shore, with the storm, with southerly winds and heavy squalls prevailing during the afternoon and night, and other ships lying further off shore to the stern of the first mentioned ship, how many fathoms of chain would you say it would require to have her ride safely in the heavy winds and squalls?

A. Blowing a gale?

Q. Yes.

Mr. SACHSE.—We object to this for the reason that it shows that he is not competent to testify.

A. I should say that she ought to have all the chain that she had.

Q. Well, about how many fathoms would you say she ought to have, in order to ride securely, without danger to herself or without danger of her drifting away from her moorings or her anchorage, and upon the other vessels lying at anchor to, the leeward of her.

Mr. SACHSE.—I renew my last objection.

A. I should say that she ought to have 75 fathoms on each chain.

Mr. SACHSE.—I move to strike the answer of the witness for the reason stated in my objection.

(Deposition of Captain H. K. Hall.)

Cross-examination.

Q. (Mr. SACHSE.) What other repairs were made on the ship outside of the repairs that you made and those made by Moran Brothers, if you know?

A. There was rigging made.

Q. You had nothing to do with the rigging?

A. Nothing to do with rigging except trimming out the old masts and stepping the new masts.

Q. What part of the rigging do you mean?

A. I mean the standing rigging, the shrouds and stays.

Q. The part that was damaged as shown by your report?

A. Yes, sir. The parts that were damaged.

Q. None of them is included in Moran's bill?

A. Not that I know of. I do not know anything about the rigging only that portion that came under my charge.

Q. Are you able to state what the cost of the repairs to the rigging would be?

A. No, sir.

Q. Captain, could you take this report of surveys and indicate on that the items covered by your bill for repairs?

A. Well, I do not know, my bill is very extensive. The items are so small.

Q. Did you make the repairs to the jib's boom?

A. Yes, sir. We made a new jib-boom.

(Deposition of Captain H. K. Hall.)

Q. Did you put in any new turnbuckles?

A. Yes, sir.

Q. For the bob stays?

A. For the bob stays, yes.

Q. You put in a new martingale for the one that had been broken?

A. Well, it was repaired by us. We repaired the old martingale.

Q. Here is an item in this survey report "Four top-masts gone and trestle trees squeezed down and broke, cross-trees and outrigger broken." Did you make the repairs to them?

A. Yes, sir.

Q. How about the port foremasts back stay broken and jumper stay?

A. Well, that was—

Q. Did you repair it?

A. No, sir, that comes in the rigger's work.

Q. How about the mizzenmast fore shroud and top-mast back stay, that was a part of the rigging, was it?

A. Yes, sir.

Q. And the jigger is part of the rigging, was it?

A. It is part of the rigging.

Q. How about the dead light, the two ten-inch dead lights that were broken? You repaired these?

A. Yes, sir.

Q. You put in new ones?

A. We put in new ones.

Q. How about the stanchions on the starboard side, fly rail on the poop and rail broken?

A. Yes, sir.

(Deposition of Captain H. K. Hall.)

Q. You repaired them?

A. These were included.

Q. How about the peak after companion-way broken and deck irons for stovepipe on poop?

A. Yes, sir.

Q. You repaired that? A. Yes, sir.

Q. And the three planks on the starboard side abaft the jigger rigging? A. Yes, sir.

Q. You repaired that?

A. We repaired or we renewed that.

Q. And how about one plank floor and a half inches by eight inches on the port side abaft the jigger rigging, did you repair that?

A. Yes, sir, we repaired that, it is a plank on the poop deck.

Q. You say, that you estimate the permanent damages to this schooner at ten per cent?

A. Yes, sir.

Q. How did you arrive at that?

A. I placed the valuation of the vessel at about \$60,000.

Q. Well, was there anything strained or broken about the vessel or the hull of the vessel?

A. There was something that was remarkable, that showed a tremendous strain that had been wrought upon that vessel, the masts from the deck down to the keelson where it was stepped into the keelson, had been strained a severe strain that came upon the masts had

(Deposition of Captain H. K. Hall.)

split the keelson for the length of 60 feet and it was ruined.

Q. Did you renew that? A. Yes, sir.

Q. That is included in your bill, is it?

A. Yes, sir.

Q. Now, after you renewed them did not that make her as strong as before?

A. Made her as strong as before, that portion of the work, fully as strong as before.

Q. And that would apply as to the other repairs that you made, would it not?

A. All the other repairs, yes.

Q. Be just as good as they were before?

A. As far as the repairs were concerned, but it don't relieve the vessel from the strain.

Q. Well, was the vessel wrenched any?

A. Yes, sir.

Q. Twisted?

A. Of course, necessarily must be.

Q. Well, was she?

A. Certainly, she was.

Q. Well, in what way, outside of the keelson, that you spoke of?

A. No, the general strain she showed it by the oakum that had started out of her sides, necessitating recalking her all over.

Q. Did you do any recalking?

A. Yes, sir, we did.

(Deposition of Captain H. K. Hall.)

Q. That is included in the bill?

A. That is included in the bill. There was not a portion of her deck but what the oakum had chewed out.

Q. You say this bill was paid by Stimson Brothers?

A. It was, yes, sir.

Q. Your bill for repairs? A. Yes, sir.

Q. And you did no other work on the ship except that shown by your bill.

A. That is all, sir.

Redirect Examination.

Q. (Mr. HUGHES.) You say the keelson was split back sixty feet?

A. I should judge it was, it took two masts, from one mast to the other, and we had to go a little beyond that.

Q. How big is the keelson on that ship?

A. What we call a rider keelson, the top piece, the keelson is constructed of, I think—her keelson was three tiers with this rider keelson on top 10 inches by 18.

Q. Then that timber, 10x18, sixty feet long, was supplied. A. Yes, sir.

Q. By you for this ship? A. Yes, sir.

Q. The keelson was more than sixty feet long, but it was split back a distance of sixty feet.

A. Yes, sir.

(Deposition of Captain H. K. Hall.)

Q. (Mr. SACHSE.) I will ask you another question, have you ever been a sea captain?

A. No, sir.

Q. Ever had anything to do with the handling of ships, I mean, so far as sailing a vessel is concerned?

A. Never.

Q. Have you been a shipbuilder? A. Yes, sir.

Q. You do not wish the Court to understand that your judgment as to the anchorage that may be necessary to hold a ship is as good as the judgment of the ordinary sea captain, do you?

A. No, I suppose a sea captain, that is his business, but I have a fair knowledge of what is necessary to moor a vessel and to hold her because it becomes necessary when we have vessels in our yards to know how much chain is required to be furnished to each vessel.

Q. (Mr. HUGHES.) But do you know that when you build a ship or have one for repairs, what weight of anchor or what weight of chain is necessary to hold that ship under the varying conditions which may occur?

A. Always.

Q. You have owned and operated ships yourself as owner or part owner for many years, have you not?

A. Yes, sir.

Q. And in your business you have had to give your attention and have had to anchor them under all kinds and conditions of weather? A. Yes, sir.

(Deposition of Captain H. K. Hall.)

Q. (Mr. SACHSE.) What would you say about a ship the size of the "Rickmore" being anchored with a 3,600-weight anchor and a 700-weight stock with a 40-fathom chain, the links of which was 12 inches long and 2 inches thick, being sufficient to hold that ship?

A. How much chain?

Q. Forty fathoms. A. How much water?

Q. Seventeen fathoms.

A. I think it is a rather short scope of chain for that depth of water. The chain must be standing at least 40 degrees with the bottom of the ground where she was anchored and naturally would pull up and lift up on the anchor with such short scope of chain.

Q. Suppose there were only 14 fathoms of water, you still think that 40 fathoms of chain would not be sufficient?

A. No, sir, under the circumstances of a severe gale, that was blowing that night.

Q. That is what you take into consideration?

A. Yes, sir.

Q. A severe gale? A. Yes, sir.

Q. But under ordinary circumstances?

A. Oh, smooth water—

Q. Well, not exactly smooth water but a little breeze blowing?

A. It might do all right, but I do not consider it a safe proposition to anchor a ship of that size with all the top hamper that she would have on her, yards and spars

(Deposition of F. J. Burns.)

and so forth, to catch the wind, with 40 fathoms or even 60 fathoms of chain.

Mr. HUGHES.—We desire to offer in evidence the paper identified by the witness as part of his evidence.

(Paper received and marked Libelant's Exhibit "E" attached to and returned herewith.)

Mr. F. J. BURNS, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. HUGHES.) What is your full name?

A. F. J. Burns.

Q. What is your business?

A. I am an insurance agent but I have been and was at the time when the survey was made, surveyor for the Marine Board of Underwriters of San Francisco. I have been surveying for them for 14 years until last March.

Q. Have you ever been master of sailing vessels?

A. Yes, sir.

Q. When and for how long?

A. The last 20 years; 26 years or so; I was master for 20 years.

Q. Were you one of the persons who surveyed on the 9th of January last the damages to the schooner "Stimson"?

A. Yes, sir.

Q. Mr. H. K. Hall and Robert Moran were associated with you in making that survey?

A. Yes, sir.

Q. You went on board of the ship?

A. Yes, sir.

(Deposition of F. J. Burns.)

Q. In a general way what did you do and what did you find there?

A. We examined her very carefully and found broken masts and the rigging was broken as described in the survey reports.

Q. I will ask you whether in the report of survey, which is attached to Exhibit "D," you correctly described the nature and extent of the injuries you found?

A. We did.

Q. I will ask you to state whether in the appraisal which is part of the papers embraced in Exhibit "D" you correctly estimated the fair and reasonable cost of making repairs, including the cost of loading and unloading again.

A. We did.

Q. You estimate the cost of repairs at \$8,500; what do you say as to whether that is a fair and reasonable estimate of what it would cost to make the repairs?

A. I believe so now and did at the time.

Q. Would it be necessary to remove her cargo in order to make these repairs?

A. Yes, sir, a portion, almost all the cargo down so as to get at the keelson.

Q. The estimate of \$1,000 is a reasonable estimate for removing the cargo and putting it back again?

A. Yes, sir. It had to be removed on lighters and kept on lighters, and landed and put on lighters again, and that made it very expensive.

Q. Is your name signed to this report of appraisal?

A. Yes, sir.

(Deposition of F. J. Burns.)

Q. Captain, you are acquainted with Shilshoal Bay?

A. Yes, fairly well; I have been on board a great many ships there and I could tell pretty near the depth of water on any vessel that I was on board of, within a few fathoms. I am fairly acquainted with Shilshoal Bay and have surveyed a great many vessels there.

Q. Assuming that on December 25th last a ship, an ordinary sailing vessel—assume that the German ship, the “Robert Rickmore,” of a capacity of between 2,500 and 2,200 tons, anchored off the southern shore of Shilshoal Bay in from 14 to 17 fathoms of water, where the shore was sloping to the northward, I mean where the bottom was descending, sloping to the northward away from the shore and a severe storm was prevailing, with heavy winds and squalls from a southerly direction, blowing off shore, and other vessels were anchored to the leeward, that is, to the north of the “Rickmore,” what would you say and what would be a proper length of chain at which a ship should ride at anchor, as a careful and prudent seaman?

Mr. SACHSE.—I object on the ground that it assumes a state of facts that is not shown to be correct by the evidence.

A. In speaking on my own experience and of ships that I have been in or that I have been master of, and from my acquaintance with other shipmasters and being conversant with them, the ship would not drag if she had her large anchor down and 75 to 90 fathoms of chain,

(Deposition of F. J. Burns.)

90 fathoms of chain would be better, the longer the chain the better. We could anchor even with a small anchor and one chain would be better with a small anchor than a short chain with a heavy anchor. In such a long chain the weight of the chain would keep the anchor down and tend to make the anchor pull into the ground and stop it from breaking away. I have been in Port Townsend when I have anchored a ship in there and it blows there in the winter very often, and I have always let go my large anchor and a large scope of chain, from 60 to 75 fathoms and be in readiness to pay out more, but if there were ships to leeward and I did not have any chance to drag, I would put out the full amount of chain, 90 fathoms, if blowing hard. I would rather have a small anchor with a large scope of chain than a short chain and heavy anchor, and if I happened to be in a position where I could not pay out the chain, I would rather have a small anchor and a large amount of chain than a large anchor with a small amount of chain.

Q. Well, if a ship were in the position where there would be nothing in the way of her paying out all of her chain, and she was anchored off shore with the wind blowing a heavy storm off shore, and in squalls, and in from 13 to 17 fathoms of water, what would you say, how much chain would you say ought a prudent and careful seaman to pay out?

A. The large anchor with 90 fathoms of chain, 75 to 90 fathoms and 90 fathoms is preferable.

(Deposition of F. J. Burns.)

Q. Where the ground in which the anchor is dropped is sloping in the direction in which the ship rides?

A. Yes, sir.

Q. What is the difficulty, if any, in holding a ship, what is the necessity, if any, in putting out the longer chain?

A. A longer chain is necessary there where the bottom is sloping than if it were perfectly level.

Cross-examination.

Q. (Mr. SACHSE.) Supposing, Captain, you were in the tow of a towboat and the towboat brought you up to an anchorage place of this *time*, and at the time of first anchoring the wind was blowing from 6 to 8 knots an hour and there were two or three other ships within three or four ship lengths of you, would you consider it safe to pay out 90 fathoms of chain under these circumstances?

A. If 90 fathoms would not have taken me on top of these vessels, if 90 fathoms had given me a length clear or any distance clear, it would be certainly much safer to let go my 90 fathoms than to take the chances of having a shorter scope out and then dragging because you would be liable to drag on top of them.

Q. Now, I am asking with the wind say from 6 to 8 knots an hour, and you are within three or four ships' lengths of these ships, would it be your opinion as a prudent seaman to pay out 90 fathoms or 40?

A. If calm, I would not pay out 90 fathoms, but cer-

(Deposition of F. J. Burns.)

tainly when it began to breeze up I would pay the chain out. It seldom comes on suddenly, it generally comes on gradually, but I certainly would look out and pay out the chain as the wind increased until I had 90 fathoms.

Q. You would not consider a 7 or 8 knots breeze strong, would you?

A. No, that certainly would not be strong. But I would look at my barometer and if it was low and the indications were that the wind might come up in the night I should watch out, and I would put out my large anchor and have out a safe amount of chain and if it began to breeze up I would put out more chain.

Q. What, in your experience, what anchor do you usually put out, the port or the starboard anchor?

A. That depends which side you have the heavy anchor on. It may be on one side or on the other.

Q. Assuming them both to be of the same size, which is the more convenient?

A. One is as convenient as the other.

Q. On the ordinary sailing ship?

A. Yes, sir, just as convenient; it don't make any difference about that.

Q. Now, how long were you engaged in making this survey of the "Stimson"?

A. We were there some hours; I do not know just how many hours now. I do not remember; probably four hours.

Q. Did you make more than one trip to the ship?

A. Yes, sir, I made two trips. I made a survey my-

(Deposition of F. J. Burns.)

self, a preliminary survey and a report and I went with the others afterwards to make the survey. We made a survey and afterwards when the keelson was in sight, the keelson was broken and after the lumber was taken out we looked at that.

Q. You made a report yourself? A. Yes, sir.

Q. Was that in writing?

A. Yes, sir; I made a preliminary survey, a report to the board of underwriters.

Q. Have you a copy of that?

A. No, I have not.

Q. Whom did you send it to?

A. I gave it to Mr. Stimson. It was Mr. Baxter made a report on it.

Q. Now, in your estimate as to the amount of the chain that is necessary, do you make any allowance for a ship being loaded or in ballast?

A. Well, the lighter she is the more chain is necessary to hold her. Of course, a vessel deep loaded will not hold so much wind and the hull will not hold so much wind as when the ship is in ballast and higher out.

Redirect Examination.

Q. (Mr. HUGHES.) Captain, you made a subsequent report which is attached to the papers in Exhibit "D," after the keelson was laid bare?

A. Yes, sir.

Q. That is the report that has your name to it?

(Deposition of F. J. Burns.)

A. Yes, sir, which is the second report when I was on there.

Q. Captain, what, if anything, did you receive for the survey and report, this first survey and report when made in conjunction with Captain Hall and Mr. Moran?

A. My recollection now is that it was \$50 for this and \$20 for the other.

Q. Now, you may state whether that is the usual and customary charge for making such surveys.

A. Yes, sir.

RICHARD SENNIN, a witness called on behalf of the libellant, being duly sworn, testified as follows:

Q. (Mr. HUGHES.) Were you on the schooner "Stimson" last December? A. Yes, sir.

Q. Are you still mate? A. Until last night.

Q. How long have you been mate on the "Stimson"?

A. Since the time before she was launched in 1900.

Q. That is before she was built?

A. Yes, sir, since before she was launched.

Q. How long have you been a seaman?

A. Since 1873.

Q. How long have you been first mate of sailing vessels? A. Ten years.

Q. Your position on the "Stimson" was that of first mate? A. Yes, sir, first mate.

Q. Where were you on the afternoon and evening of December 25th last?

(Deposition of Richard Sennin.)

A. In the afternoon I was in Ballard; in the evening a quarter of six I was on board of the schooner "Stimson."

Q. Where was the schooner "Stimson" at that time?

A. Anchored in Shilshoal Bay.

Q. When did you go from Ballard back to the ship?

A. I started at 5 P. M.

Q. How did you get to the ship?

A. In the ship's dingey.

Q. Did you row back yourself? A. Yes, sir.

Q. What was the state of the weather at that time?

A. Well, it was a stiff breeze, now and then a puff of wind, light squall.

Q. What other ships were anchored there at that time when you got back there?

A. The schooner "Corona" and the schooner "Mildred," the ship "Robert Rickmore." I did not know her name then, but I know now that it was the "Robert Rickmore."

Q. That is, besides the "Stimson"?

A. Besides the "Stimson."

Q. Had the "Corona" and "Mildred" been anchored there before you left the ship that day to go to Ballard?

A. Yes, sir.

Q. Was the "Rickmore" anchored there at that time, before you left?

A. She was not anchored then.

Q. You found her when you got back?

(Deposition of Richard Sennin.)

A. Yes, sir.

Q. Now, can you indicate on this map the relative positions where these three ships lay at anchor in Shilshoal Bay? A. Yes, sir.

Q. Now, the letter "S" in red pencil to the left of the "Stimson" on this chart Exhibit No. 1?

A. Yes, sir, that indicates the "Stimson."

Q. The letter "C"? A. The "Corona."

Q. And the letter "M" the "Mildred"?

A. Yes, sir.

Q. And the letter "R" the "Robert Rickmore"?

A. Yes, sir.

Q. Is that your idea of their location?

A. Yes, sir, but I have got an opinion that there is a mistake made, that the "Mildred" was here, and the "Corona" over here. (Indicating.)

Q. That is, the two positions of the "Mildred" and the "Corona" should be reversed from where these letters show? A. Yes, sir.

Q. In any case one of them was about where the letter "C" is?

A. The position is about the same, only the matter of the name.

Q. About what distance, in your opinion, were the "Mildred" and the "Corona" from the "Rickmore"?

A. Well, now, I judge the distance to be about a quarter of a nautical mile, you know, from the "Rickmore" straight down to the "Stimson."

(Deposition of Richard Sennin.)

Q. What I have asked was about what was the distance from the other two ships?

A. That would give pretty near an idea; they were lying pretty well in a lump when I saw them lying there, coming off.

Q. What kind of a vessel is the "Stimson"?

A. A four-masted schooner.

Q. What kind of a vessel is the "Mildred"?

A. A three-masted baldheaded schooner.

Q. What is the "Corona"?

A. A three-masted schooner.

Q. And what was the "Rickmore"?

A. A four-masted.

Q. What was the condition of the weather after you got on board ship and from that on until midnight?

A. A strong breeze with heavy squalls occasionally.

Q. Which way was the wind blowing?

A. The wind was blowing from about south southwest; all the vessels were heading south.

Q. And did you notice anything wrong with the "Rickmore" during the evening? A. No.

Q. When your attention first attracted to any trouble of any kind?

A. When a watchman called me at twenty minutes of twelve at night.

Q. What did you do then?

A. I jumped out of bed and slipped on my pants, and when I got on deck I got as far as the main mast, when the "Rickmore" crashed into our jib-boom.

(Deposition of Richard Sennin.)

Q. Did you observe the "Rickmore" just before she crashed into the jib-boom? A. No.

Q. Did you immediately after?

A. Immediately after.

Q. Did you notice her anchor chains?

A. Yes, sir.

Q. Was her position such so that you could see both her starboard and port anchor chains?

A. Not when she struck the jib-boom but after she slued around alongside of us, she came with her stem right into our fore rigging and she got hung up with her fore yard on our starboard fore rigging.

Q. Came with her stem toward you?

A. Athwart our stem and then she slued around this way (showing). And then she sagged until her fore yards caught our fore rigging and I could see across our stem, both anchor chains.

Q. What were they carrying?

A. Both anchor chains were hanging down slack, not any strain on either one of them.

Q. Now, will you go on and describe what occurred from the time you got on deck?

A. Well, when I came on deck—

Q. Describe everything.

A. When I got on deck the first was a crash, when she carried away the jib-boom and then the fore top-mast came tumbling down and then she slued around and got hooked up with her fore yard, all her fore yards

(Deposition of Richard Sennin.)

were braced up to port. That means this (showing); her stem was up here and her yards were braced this way, and when she slued around she hooked her port fore yard arm between the fore mast and the fore rigging and there she stuck. I sung out to the mate of the "Rickmore" to "let go your port fore braces" and the answer I got, he says, "I haven't got any port fore braces"; so she hung up and then a squall struck us and then the fore braces carried away.

Q. Their fore braces carried away?

A. Their fore braces carried away and that gave the vessel a chance, the "Rickmore" a chance to get a little further and her yards swung forward until the top sail sheet, the lower fore topsail sheet, a five eight inch link of iron or perhaps three-quarter links fetched the yard up and held it. Now, of course, there is a clew line to that sheet and a wire to the sail, the lower topsail, and I hauled it up to make it fast, and that carried away after that, but before that she ripped the lower topsail out of the gasket and tore it all to pieces and the clew line carried away and eventually she got clear past the fore rigging and then she got hooked up with the jib-boom on the main mast.

Q. With your jib-boom on her main mast?

A. With her jib-boom on our main mast, because our yards were braced away; we were pointing south and she was south southwest, and the way her yards were braced, the way she came down on top of us, she could not get away at all, and the wind braced her right clear

(Deposition of Richard Sennin.)

on top of us, and she tore the starboard rigging away, and she slued a little further aft and got hung up on the mizzenmast. When she got clear of the fore rigging she tore off the two masts and the whole business.

Q. All the rigging?

A. All our rigging, and she chewed the mizzen mast and the spanker through.

Q. And she eventually got clear of your vessel?

A. Yes, sir.

Q. In the meantime did she carry your vessel with her?

A. Yes, sir.

Q. How far did she take it?

A. Down to Richmond Beach; about seven miles, I guess.

Q. You were fast together during all of that distance?

A. All the time.

Q. Examine this next chart, Exhibit No. 2, and indicate about where you fetched up again, where the "Stimson" fetched up again; is that about where the letter "S" in lead pencil is marked on the map?

A. Yes, sir, and the "Rickmore" is further aft.

Q. Had you anchored before in Shilshoal Bay?

A. Yes, sir, about a dozen times.

Q. And how does the bottom slope from where the "Rickmore" was at anchor?

A. Sloped down this way.

Q. Sloped to the north?

A. To the north.

Q. Toward where the "Stimson" was?

(Deposition of Richard Sennin.)

A. Yes, sir, toward where the "Stimson" was.

Q. Gets deeper as you go north? A. Yes, sir.

Q. Now, the way the wind was blowing that night how much chain do you say a ship like the "Rickmore" should have had to her anchors to ride safely in the position she was and the character of the weather, and the way the winds were blowing and the character of the bottom and the location of the other vessels?

Mr. SACHSE.—I object as calling for a conclusion of the witness.

A. I should not have given less than 90 fathoms of chain.

Q. How much chain was out on the "Stimson"?

A. One hundred and five.

Q. In your opinion was it safe to have had from 33 to 40 fathoms of chain even if both anchors were out?

A. No, sir, it was not safe.

Q. Why not?

A. Because that gives too much leverage on the anchor.

Q. After the "Rickmore" first struck your ship, if the captain of the "Rickmore" had let go his braces, what would have been the effect?

A. The effect would have been that the yards would have swung around to starboard, and the "Rickmore" would have slid clear without injuring the starboard rigging at all.

(Deposition of Richard Sennin.)

Q. Without doing any further damages than they had done by the first collision? A. That is all.

Q. You say you sung out to let go the port fore braces? A. Yes, sir.

Q. Did they do it?

A. He said they had no port fore braces.

Q. What depth of water was the ship anchored in?

A. Nineteen fathoms.

Q. How much of a load did you have on at that time?

A. Well, the deckload was about a foot above the rail.

Q. About what proportion of the cargo capacity?

A. Well, about 650,000 to 675,000, perhaps.

Q. She was carrying 650,000 to 675,000 feet of lumber? A. Yes, sir.

Q. You were carrying a cargo of lumber, were you?

A. Yes, sir.

Q. How long did it take to put that on?

A. Fifteen days.

Q. You had been engaged fifteen days in loading up to that time? A. Yes, sir.

Q. Did you remain with the ship while being repaired? A. Yes, sir.

Q. Did the crew remain? A. Yes, sir.

Q. How was the crew engaged during that time?

A. In the first place there was some preventers to keep the mast from tumbling over. We had to stay

(Deposition of Richard Sennin.)

the masts a little to keep them standing to get the lumber out, and then we had to work the lumber and had longshoremen to put it on scows. Afterwards the sails had to be taken down and the rigging and one thing and another.

Q. Was the crew engaged all the time while the crew was here on account of this collision, either in unloading or loading again or in helping to repair the wreck and doing other work of repairing the ship?

A. Yes, sir.

Q. Repairing the damages that were done?

A. Yes, sir.

Q. Repairing the damages that were done?

A. Yes, sir.

Q. Employed all the time, were they?

A. Yes, sir, helping the carpenters and helping the riggers and helping everybody.

Q. Do you remember when the ship was repaired so as to be able to commence taking in cargo again?

A. Yes, sir, on the tenth of March we were ready to load again.

Q. How long did it take to put as much load in as you had at the time of the collision?

A. Fifteen days.

Q. So that you were delayed 90 days?

A. We were delayed 90 days.

(Deposition of Richard Sennin.)

Cross-examination.

Q. (Mr. SACHSE.) What time did you leave your ship for Ballard that day?

A. At 5 P. M., I left the boat landing in Ballard.

Q. What time did you get to Ballard?

A. I started—

Q. From Ballard—when did you get to Ballard?

A. On Christmas Eve.

Q. And were you in Ballard Christmas Day?

A. I was in Ballard Christmas Day until 5 P. M.

Q. How far is it from Ballard where you took your dingy boat, do you call it? A. Yes, sir.

Q. To where the "Stimson" lay?

A. About two miles; it is about that.

Q. How was the weather at the time that you left Ballard? A. Well, there was a little breeze.

Q. Anyone else in the dingy with you?

A. No, sir.

Q. How long did it take you to go over there?

A. Three-quarters of an hour.

Q. I understood you to say that you did not come on deck until after the collision took place; is that right?

A. I just came on deck when the collision occurred; the watchman called me twenty minutes to twelve. I was six hours on board when that vessel struck us.

Q. What time did the collision occur?

A. Twenty minutes to twelve.

Q. How was the weather then?

A. It was blowing hard when I first arrived on deck.

(Deposition of Richard Sennin.)

Q. Blowing very hard was it? A. Yes, sir.

Q. An unusual gale?

A. Unusually strong gale.

Q. Are you still in the employ of the Stimson Company?
A. Until last night.

Q. Are you not working for them any more?

A. No, I am sick. I ought to be in the hospital to-day instead of being here.

Q. You have not been discharged, have you?

A. No, sir.

Q. You took a lay off? A. Yes, sir.

Q. That is all, is it? A. Yes, sir.

Q. How many anchors did the "Stimson" have out?

A. One.

Q. The port or starboard? A. The starboard.

Q. What is the length of the cable on the "Stimson's" starboard anchor?

A. One hundred and five fathoms.

Q. You had it out the full length?

A. Had it out the full length.

Q. Before the "Rickmore" came into collision with you?

A. Yes, sir, we let it go most of it the day before, we had 105 fathoms out.

Q. Well, the position of the "Rickmore" was rather in a protected place, was it not, from the wind?

A. Yes, sir, it ought to be; it was the closest under the bluff, under the land.

Q. Considered a safe place to anchor?

(Deposition of Richard Sennin.)

A. Well, sometimes it might be and sometimes it might not.

Q. Well, under ordinary circumstances?

A. Well, that night it was not a safe place anyhow. The wind was blowing from the south southwest and it was not a safe place there.

Q. It was safer than where the "Stimson" was that night? A. Yes, sir.

Q. How was it after five o'clock in the evening?

A. At five o'clock in the evening the wind was south southwest.

Q. Was it blowing very hard then?

A. It was not blowing very hard then.

Q. You considered it a perfectly safe place to anchor where the "Rickmore" was at that time?

A. It might have been safe then, but not with that kind of a chain.

Q. What kind of a chain?

A. That the "Rickmore" put out.

Q. How do you know what chain she had out?

A. From statements made in Tacoma last winter.

Q. You are acting upon what the other people have said?

A. Well, certainly that is all I that I know about it. I was not on board the "Rickmore."

Q. Were you down there and heard that testimony?

A. Yes, sir.

Q. You think then that the "Rickmore" was at fault in not having out more cable?

(Deposition of Richard Sennin.)

A. She ought to have had more cable, yes, sir.

Q. As a matter of fact, if she was in that position and had out 90 fathoms of cable, your opinion would be changed, would it not?

A. If she had out 90 fathoms, yes.

Q. On the starboard anchor, yes.

Q. On the starboard anchor?

A. If she had 90 fathoms of chain out she would not have dragged, I do believe.

Q. You do not believe she would? A. No, sir.

Q. You do not believe that she would drag in a gale of that kind? A. No, sir.

Q. With one anchor? A. With one anchor.

Q. How often have you been coming to this bay up here, Shilshoal Bay? A. About a dozen times.

Q. Ever experience any storm as bad as that up there?

A. Yes, sir, worse.

Q. When?

A. I have seen bad ones; October, a year ago, and in November, 1900.

Q. Were there any ships in the harbor at that time?

A. Yes, sir, the "A. M. Baxter" was there.

Q. Did she drag? A. No, sir.

Q. Where was she anchored?

A. About the same place where the "Rickmore" was lying at the time.

Q. That was October of what year?

A. November of 1900.

Q. What ship did you say that was?

(Deposition of Richard Sennin.)

A. The "A. M. Baxter."

Q. How big a ship is she—do you know?

A. Well, she is a schooner, she is about 420 or 430 tons.

Q. A small schooner is she compared with the "Rickmore"?

A. She is not to be compared with the "Rickmore."

Q. Was the "Stimson" anchored there at that time?

A. The "Stimson" was anchored there at that time.

Q. Did she drag her anchors any? A. No, sir.

Q. What day was that in November?

A. I couldn't say exactly the date.

Q. November, 1900? A. Yes, sir.

Redirect Examination.

Q. (Mr. HUGHES.) What is the size of your anchor or the weight of it? A. I guess 3,200 pounds.

Q. Did the "Stimson" drag that night before the "Rickmore" came in collision with it? A. No.

Q. Did either the "Corona" or the "Mildred" drag any? A. Not that I know of.

Q. (Mr. SACHSE.) How do you know the "Stimson" did not drag any?

A. I know because she was in the same position when the watchman called me and the other ship was lying on top of us and she hung on a quarter of an hour, she held the ship and the schooner both on that one chain, in the same position.

(Deposition of Richard Sennin.)

Q. I ask you how you knew that?

A. Because I was awake then, I was on the fore-castle head when the ship was lying right on top of us.

(Testimony of witness closed.)

Captain CHRISTIAN PETERSON, a witness called on behalf of the libelant, being duly sworn, testifies as follows:

Q. (Mr. HUGHES.) You are a master mariner?

A. Yes, sir.

Q. Master of the schooner "Stimson"?

A. Yes, sir.

Q. How long have you been master of her?

A. Two years and a little over.

Q. When was she launched?

A. She was launched in August, 1900.

Q. You were her first master? A. Yes, sir.

Q. Been on her then for a little more than a year when the collision occurred with the "Rickmers"?

A. Yes, sir.

Q. Were you on board at the time of that collision?

A. No, sir, I was not on board.

Q. Where were you?

A. I was at home in Ballard.

Q. Your home is in Ballard? A. Yes, sir.

Q. You were not on the "Rickmers" on Christmas Day at all? A. No, I was not on board.

Q. You were not on board of the "Stimson" on Christmas Day? A. No, sir.

(Deposition of Captain Christian Peterson.)

Q. You did not see the "Rickmers" at anchor there?

A. No.

Q. Captain, do you know how much chain the "Stimson" had out? A. She had out 105 fathoms.

Mr. SACHSE.—I object to this.

Q. How long had you had that out?

A. We put it out the day after we anchored.

Q. How long had you been anchored there?

A. We had been anchored there fifteen days.

Q. Had you been taking on cargo?

A. Yes, sir.

Q. All of that time? A. Yes, sir.

Q. How much cargo had you already on?

A. We had put on 650, or 660,000 feet.

Q. Do you know where the "Mildred" or the "Corona" were anchored? A. Yes, sir.

Q. They were at anchor there the day before and prior to that, were they? A. Yes, sir.

Q. About where were they anchored with reference to the position of the "Stimson"?

A. The "Mildred" was anchored a little to the southwest of the "Stimson" and the "Corona" was a little to the southeast of the "Stimson"; we had one on each bow; we were heading south.

Q. Are you familiar with the lay of the ground there in Shilshoal Bay? A. Yes, sir.

Q. Which way does the bottom slope?

A. It slopes up to the north and westerly.

Q. After the "Robert Rickmers" came to anchor there

(Deposition of Captain Christian Peterson.)

on Christmas afternoon or evening near shore—that is, inside of the “Corona” and the “Mildred,” in about 13 or 14 fathoms of water, being light laden, being in ballast, I mean—what would you say good seamanship would require as to the length of chain that she should have out on her anchors?

A. Well, I should say about 90 fathoms.

Q. Do you know what the weather was on that evening, on that night?

A. Yes, sir, it was stormy and squally.

Q. How was the barometer?

A. It was low. I do not remember exactly how it stood, but it was low.

Q. In that kind of ground would you say that from 33 to 40 fathoms of chain would be sufficient to hold a ship the size of the “Rickmers” at anchor with the wind blowing as it blew that night

A. No, I should not.

Q. What would be the difficulty?

A. Well, with a short scope of chain it would be apt to break the anchors out of the ground.

Q. Would they break out quicker when the ground was sloping in the direction in which the ship was reaching, the opposite direction from which the wind was blowing?

A. Yes, sir, break out much quicker, and then another thing, if she had a short scope of chain and the wind changed, she is liable to foul the anchor. She is quicker to foul the anchor with a short scope of chain than if she has a long scope of chain.

(Deposition of Captain Christian Peterson.)

Q. When did you go on board the "Stimson" again?

A. On the 26th in the morning about eight o'clock or half-past eight.

Q. Where did you find her?

A. I found her on Richmond Beach.

Q. How did you get to her?

A. On the tug "Stimson."

Q. Well, the tug took you there?

A. Yes, sir, the company's tugboat was lying at the wharf.

Q. And there was no charge made for that?

A. No.

Q. Now, captain, in a general way, what condition did you find her in.

A. Well, I found her—all the rigging was torn away on the starboard side, the turnbuckles gone, and the chain plates and the rail and the bulwarks and the masts were chafed considerably too I think and the jib-boom was broken and the fore topmast was broken.

Q. Had she ever received any injuries prior to this time? A. No, sir.

Q. What was her condition when you left her on the day before Christmas?

A. She was in first-class condition; she was practically new.

Q. You may state whether or not it was necessary to unload the "Stimson" in order to have the repairs made.

(Deposition of Captain Christian Peterson.)

A. Well, I could see the chain plates were broken and we had to get the chain plates and bolts out.

Q. It was necessary to unload her?

A. Yes, sir.

W. Was all the cargo taken out of her?

A. No, there was about 60,000 feet remained in the hold. We had to get down below to the keelsons in order to get at them and repair them.

Q. How many feet did you have in?

A. Six hundred and fifty-five or six hundred and sixty thousand.

Q. So that you had to take out a little over 600,000 feet of lumber?

A. Yes, something like that.

Q. Now, Captain, where did you unload that lumber?
A. At Seattle, here in the bay.

Q. Where did you bring the ship?

A. Brought her up here to one of the buoys.

Q. How did you get it up here?

Q. Towed it up here, had a towboat to tow her.

Q. Was that necessary? A. Yes, sir.

Q. Did you unload her at Seattle?

A. Yes, sir.

Q. Why did you come here to the harbor of Seattle?

A. We had no anchors to lay to and our windlass was broken to pieces.

Q. Your anchors were lost.

A. No, not lost. They were hanging over the bow

(Deposition of Captain Christian Peterson.)

and we could not lift them because our windlasses were broken and we had to hire the boat to lift them for us.

Q. When the anchor was not available you had to make fast to the buoy?

A. Yes, sir, we had to hire one of the buoys.

Q. You came to the ones in Seattle because they were the nearest? A. Yes, sir.

Q. Where did you put the lumber?

A. We put it on lighters.

Q. Was that the only way that you could unload the deck load at that time?

A. Yes, sir, I think it was.

Q. Now, Captain, after she was unloaded what did you do in the way of making repairs?

A. Well, we unbent the sails and stripped her as much as possible.

Q. Who did that? A. The sailors.

Q. Who did the unloading?

A. The sailors and stevedores, both.

Q. Did you keep your entire crew all the time the ship was undergoing repairs? A. Yes, sir.

Q. The unloading and the reloading?

A. Yes, sir.

Q. How were they employed?

A. They were employed by the round trip to San Pedro and return.

Q. What were they engaged in doing all of this time?

A. The work had to be done, the unbending of the

(Deposition of Captain Christian Peterson.)

sails and the taking down of the rigging and the work of that character.

Q. Were they kept engaged with work all of the time? A. Yes, sir.

Q. State whether or not the work that they did was necessary to be done in order to have the repairs made?

A. Yes, sir.

Q. And put the ship back in the condition as nearly as practicable as she was before? A. Yes, sir.

Q. Now, after you unbent the sails where was the ship taken? A. To Port Blakely.

Q. What for? A. For repairs.

Q. How did you get her over there?

A. Towed her over.

Q. Hired a tug for that purpose? A. Yes, sir.

Q. Was that necessary? A. Yes, sir.

Q. When the repairs were completed what did you do then? A. We towed her back to Ballard.

Q. Where was the rigging put on the ship?

A. It was put on over at Ballard. The rigging was put on at Blakely but it was set up down at Ballard while the vessel was loading.

Q. You had her towed back then to the place where she was injured or in that immediate vicinity?

A. Yes, sir.

Q. When did you get back there ready to load again?

A. We got back on the ninth of March.

Q. How long had it taken you to put the cargo in her that was in her at the time the collision occurred?

(Deposition of Captain Christian Peterson.)

A. Fifteen days.

Q. How long did it take you to again put the same kind of cargo in? A. Fifteen days.

Q. How much time was lost by reason of this collision on that ship? A. Ninety days.

Q. In what business was this schooner engaged at the time.

A. In the coasting trade, the lumber carrying trade.

Q. Where were you running?

A. Between Ballard and San Pedro.

Q. Did you have a charter for her cargo to San Pedro? A. Yes, sir.

Q. How was that charter, with reference to value of the preceding charter, the one immediately preceding it, the price?

A. Well, it was at the rate of \$7 a thousand.

Q. Was it the same as the one before?

A. Yes, sir.

Q. How long did it take you to make the round trip before, immediately before this time?

A. Two months.

Q. What is the average time for making this trip to San Pedro?

A. Well, about two months, although we made one trip in 52 days, but it was about two months.

Q. You had been carrying for a little over a year in the same trade, had you? A. Yes, sir.

Q. About how many trips did you make a year?

(Deposition of Captain Christian Peterson.)

A. About six in a year.

Q. The average time would be about 60 days for a round trip?

A. Yes, sir.

Q. You say you had the same charter price for the voyage for which the ship was loading at the time of this collision, as the one immediately preceding.

A. Yes, sir.

Q. Now, what was the net earning of the ship for the charter immediately preceding this trip.

A. Well, I remember we had \$3,500 dividends.

Q. Three thousand five hundred dollars was the net earnings over and above the expenses of the trip, for that trip at the same rate of charter?

A. Yes, sir, the same rate of freight.

Q. What do you say as to whether your expenses would have been the same on this trip?

A. Well, practically the same.

Q. If you had been permitted to make it?

A. Yes, sir.

Q. What would have been the value of the charter for that trip?

A. The same as the trip before.

Q. Did you lose that charter?

A. No, I think not.

Q. Did not you have to carry that for six dollars and a half a thousand after you were repaired?

A. I am not sure about that, I could not swear to that.

(Deposition of Captain Christian Peterson.)

Q. You could not swear as to that, you lost 90 days, you say? A. Yes, sir.

Q. Now, what would have been the net earning capacity or value of that ship for the 90 days?

A. Well, it would be a trip and a half.

Q. Well, how much would that be?

A. About \$5,200 or \$5,300, something like that.

Q. Captain, did you have charge of the disbursement of the account for the repairs of the ship?

A. Well, I O. K.'d the bills; I saw the work was done and I O. K.'d the bills.

Q. Did you personally examine everything that was done? A. Yes, sir.

Q. And was acquainted with the correctness of the bills? A. I was.

Q. Now, Captain, you may examine this bill marked Libellant's Exhibit "F" and state what that was for.

A. That was for provisions on board of the schooner that was used while the vessel was discharging the lumber in Seattle Bay.

Q. Was that a necessary part of the necessary expenses of the schooner? A. Yes, sir.

Q. And its crew while working on her?

A. Yes, sir, while working the cargo.

Q. Was that paid? A. Yes, sir, that was paid.

Q. Is that a correct bill? A. Yes, sir.

Mr. HUGHES.—I offer this in evidence.

(Deposition of Captain Christian Peterson.)

Mr. SACHSE.—I object as irrelevant and immaterial.

(Paper marked Libelant's Exhibit "F" returned herewith.)

Mr. HUGHES.—Examine this paper which had been marked Libelant's Exhibit "F1" and which consists of several documents, now state what these bills were for?

A. These are labor bills for the discharge of the lumber and this bill here is for the taking of testimony at Tacoma by the "Rickmers."

Q. The item of \$4.95.

A. Yes, sir. A list here is for provisions and then here is one while we were moored over here in the bay and then here is one for the sail-makers that should not be included in the bill, that was before this accident occurred. That don't belong there.

Q. Which item is that?

A. The \$10, the sail-maker's bill.

Q. That should be deducted then?

A. That should be deducted. It is dated December 20th, and that is before the accident, and here is one for \$1.30 for the shipping articles.

Q. Then, Captain I will withdraw from the exhibit the two bills that you have last designated as bills that do not belong in this account and they are in here by mistake. The last one here is the payroll of the crew, is it?

A. Yes, and also the disbursements—

(Deposition of Captain Christian Peterson.)

Q. Now, I will ask you to state whether these bills attached here together all under Exhibit "F1" were bills for labor and provisions and supplies actually used and incurred during the period that this ship was undergoing repair? A. Yes, sir, they were.

Q. Are they for labor done upon the ship, necessary to effect the repairs? A. Yes, sir.

Q. Including the labor of the crew?

A. Yes, sir.

Q. And the wages paid them? A. Yes, sir.

Q. I will ask you if all this work that was done represented by the various bills marked here Exhibit "F1" was necessary for the repairs of the ship?

A. Yes, sir, they were.

Q. Were these the actual and reasonable value of the services? A. Yes, sir.

Q. State, Captain, whether the bills were paid.

A. Yes, sir, they were paid.

Mr. HUGHES.—I offer this paper in evidence.

Mr. SACHSE.—I object as incompetent, irrelevant and immaterial.

(Papers marked Libelants' Exhibit "F1" and returned herewith.)

Q. I ask you to examine a paper which I have had marked Libelants' "F2" and state what that is for?

A. That is one of the sailors, they gave him an order on the company to pay him.

Q. That was not embraced in Exhibit "F1"?

(Deposition of Captain Christian Peterson.)

A. No, sir.

Q. This was the regular wages of that sailor?

A. Yes, sir.

Q. The work done by him referred to in this bill was rendered necessary by the collision, was it?

A. Yes, sir.

Mr. HUGHES.—I offer this paper in evidence.

Mr. SACHSE.—I object as incompetent, irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F2" and returned herewith.)

Q. You may examine the paper which has been marked Libelants' Exhibit "F3" and state what that represents?

A. That is also for a sailor.

Q. That is also work rendered necessary by this collision?

A. Yes, sir.

Q. And that is the wages actually paid this sailor?

A. Yes, sir.

Q. And not embraced in any other exhibit that has been offered.

A. No, sir.

Mr. HUGHES.—I offer this paper in evidence.

Mr. SACHSE.—We renew our last objection.

(Paper marked Libelants' Exhibit "F3" and returned herewith.)

Q. I show you a paper which has been marked Libelants' Exhibit "F4" and ask you to state what that is?

(Deposition of Captain Christian Peterson.)

A. That is also for wages for sailors.

Q. The same facts true of this as of the preceding exhibits? A. Yes, sir.

Mr. HUGHES.—I offer this paper in evidence.

Mr. SACHSE.—We renew our last objection.

(Paper marked Libelants' Exhibit "F4" and returned herewith.)

Q. Examine this paper which has been marked Libelants' Exhibit "F5" and state what that is?

A. That is for a sailor also.

Q. The same is true as of the two preceding exhibits? A. Yes, sir.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We renew our last objection.

(Paper marked Libelants' Exhibit "F5" and returned herewith.)

Q. Examine this paper which has been marked Libelants' Exhibit "F6" and state what that is?

A. That is for a seaman also.

Q. The same facts are true of this as of the preceding exhibits? A. Yes, sir.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We object as incompetent, irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F6" and returned herewith.)

(Deposition of Captain Christian Peterson.)

Q. Examine this paper which has been marked Libelants' Exhibit "F7" and state what that represents?

A. That is for supplies for the time that we were loading.

Q. All of the items hereafter December 19th embraced in the circle marked on the paper?

A. Yes, sir.

Q. Amounting to \$57.16? A. Yes, sir.

Q. These items are for supplies while the vessel was laid up for sustaining the crew and feeding the crew?

A. While loading the vessel.

Q. Was that paid?

A. Yes, sir, that is paid.

Q. And are these prices reasonable and ordinary prices for the matters mentioned?

A. Yes, sir, that is the price we always pay.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We object as incompetent, irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F7" and returned herewith.)

Q. Examine this paper which has been marked Libelants' Exhibit "F8" and state what items on that bill after December 24th represent?

A. That is for supplies and groceries.

Q. What were they used for?

A. For feeding the crew while the vessel was loading.

(Deposition of Captain Christian Peterson.)

Q. The prices are reasonable prices.

A. Yes, sir.

Q. What is the total amount of the items there furnished after March 7th and while the crew was loading?

A. Forty-nine dollars and twenty-eight cents.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We renew our last objection.

(Paper marked Libelants' Exhibit "F8" and returned herewith.)

Q. You may examine this paper which has been marked Libelants' Exhibit "F9" and state what that is?

A. That is for reloading the vessel, that is a labor bill.

Q. Was this amount of wages actually due these persons. A. Yes, sir.

Q. For work done in reloading the lumber that was taken off the "Stimson?" A. Yes, sir.

Q. For the purpose of repairs? A. Yes, sir.

Q. I will ask you if the supplies were necessary for the maintenance and the keeping of the men while they were reloading to the extent that the ship had to be unloaded to make the repairs.

A. They were.

Q. In using the word "reloading" you refer to putting back the cargo that had been taken out of the ship?

A. Yes, sir, exactly.

(Deposition of Captain Christian Peterson.)

Q. I will ask you whether this has been paid to these men? A. Yes, sir.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We object as incompetent, irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F9" and returned herewith.)

Q. Examine the paper which has been marked Libelants' Exhibit "F10" and state what that represents?

A. That is a labor bill.

Q. The same facts are true of that as of the preceding exhibit? A. Yes, sir.

Q. Was that paid? A. Yes, sir.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We object as incompetent, irrelevant and immaterial.

(Paper marked Libelants' "F10" and returned herewith.)

Q. Examine Exhibit "F11" which has just been marked such and state what that is?

A. That is a labor bill also.

Q. Are the same facts true of that as of the preceding exhibit? A. Yes, sir.

Q. Was that also paid? A. Yes, sir.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We renew our last objection.

(Deposition of Captain Christian Peterson.)

(Paper marked Libelants' Exhibit "F11" and returned herewith.)

Q. You may examine this paper which has been marked Libelants' Exhibit "F12" and state what that represents?

A. That is for a labor bill.

Q. The same facts are true of that as of the preceding labor bills that have been offered in evidence?

A. Yes, sir.

Q. Was it paid? A. Yes, sir.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We renew our last objection.

(Paper marked Libelants' Exhibit "F12" and returned herewith.)

Q. You may examine the paper which has been marked Libelants' Exhibit "F13" and state what that represents?

A. That is for lifting an anchor. We could not lift that ourselves on account of the windlass being broken to pieces. The steamer "Rapid Transit."

Q. The services of a wrecking schooner?

A. Yes, sir.

Q. That was \$200? A. Yes, sir.

Q. Were these services rendered necessary by reason of this collision? A. Yes, sir.

Q. Was that amount paid? A. It was.

Mr. HUGHES.—We offer this paper in evidence.

(Deposition of Captain Christian Peterson.)

Mr. SACHSE.—We object as incompetent, irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F13" and returned herewith.)

Q. You may examine the paper which has been marked Libelants' Exhibit "F14" and state what the last item on this Exhibit "F14" under date of December 28 represents, this \$50.

A. A towage from Richmond Beach to Seattle.

Q. What vessel did that towing?

A. The steamer "Dolphin."

Q. Was that a reasonable charge?

A. Yes, sir.

Q. Was it paid? A. Yes, sir, it was paid.

Q. Was that towing after the collision?

A. Yes, sir.

Q. From Richmond Beach to Seattle?

A. Yes, sir.

Q. That was rendered necessary by the collision?

A. Yes, sir.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We renew our last objection.

(Paper marked Libelants' Exhibit "F14" and returned herewith.)

Q. Examine this paper which has been marked Libelants' Exhibit "F15" and state what that is?

A. That is for Captain Burns' survey.

(Deposition of Captain Christian Peterson.)

Q. Was that for the survey of the ship after the accident? A. Yes, sir.

Q. You have heard Captain Burns' testimony?

A. Yes, sir.

Q. This was the bill rendered for this service that he testified to? A. Yes, sir.

Q. Was it paid? A. Yes, sir.

Q. Was that the customary and reasonable charge for such services? A. Yes, sir, it is.

Mr. HUGHES.—I offer this paper in evidence.

Mr. SACHSE.—We renew our last objection.

(Paper marked Libelants' Exhibit "F15" and returned herewith.)

Q. You may examine the paper which has been marked Libelants' Exhibit "F16," and state what that is?

A. That is for the survey, by Mr. Moran.

Q. Was that for the survey that was made by Robert Moran in conjunction with Captain Burns and Captain Hall? A. Yes, sir.

Q. Is that a reasonable charge? A. Yes, sir.

Q. Was it paid? A. Yes, sir.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We renew our last objection.

(Paper marked Libelants' Exhibit "F16" and returned herewith.)

(Deposition of Captain Christian Peterson.)

Q. Examine the paper which has been marked Libelants' Exhibit "F17" and state what that is.

A. That is also a survey bill.

Q. The same facts are true of that as of the preceding exhibit? A. Yes, sir.

Q. It was paid, was it? A. Yes, sir.

Mr. HUGHES.—We offer that in evidence.

Mr. SACHSE.—We renew our last objection.

(Paper marked Libelants' Exhibit "F17" and returned herewith.)

Q. You may examine the paper which has been marked Libelants' Exhibit "F18," and state what that is?

A. It is a bill for rent of lighters on which we stowed the lumber that we discharged from the schooner?

Q. Was this necessary on account of this collision?

A. Yes, sir.

Q. Was that a reasonable bill?

A. Yes, sir, I think it is.

Q. Was it paid? A. Yes, sir.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We renew our last objection.

(Paper marked Libelants' Exhibit "F18" and returned herewith.)

Q. You may examine the paper which has been

(Deposition of Captain Christian Peterson.)

marked Libelants' Exhibit "F19" and state what that is?

A. That is a coal bill used in discharging the cargo.

Q. Was that coal necessary for the discharge of the cargo? A. Yes, sir.

Q. Was it a reasonable bill? A. Yes, sir.

Q. That is, for the discharge of the cargo rendered necessary by this collision? A. Yes, sir.

Q. Was it paid? A. Yes, sir.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We object as incompetent, irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F19" and returned herewith.)

Q. You may examine the paper which has been marked Libelants' Exhibit "F20" and state what that is? A. That is a bill for supplies.

Q. A bill of Schwabachers and Company?

A. Yes, sir.

Q. What were these supplies for?

A. They were used while we were lying here repairing and unloading and repairing.

Q. Were they necessary for the support of the crew?

A. Yes, sir.

Q. The items and charges there are reasonable?

A. Yes, sir.

Q. They were paid? A. Yes, sir.

(Deposition of Captain Christian Peterson.)

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We object as incompetent, irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F20" and returned herewith.)

Q. Examine this paper which has been marked Libelants' Exhibit "F21" and the several items of the Schwabacher Hardware Company and state what that represents?

A. That was for glass, lights that were broken.

Q. Broken by the collision?

A. Yes, sir. One of the dead lights and there is wire rigging and wire sieve.

Q. And the last one?

A. That is for scrapers and hack saws for scraping the pitch off the deck.

Q. I will ask you if the items enumerated in these bills were all necessary to be purchased for the purposes of repairing the ship? A. Yes, sir.

Q. From the injuries caused by this collision?

A. Yes, sir.

Q. Were the charges here reasonable charges?

A. Yes, sir.

Q. Was the total bill paid? A. Yes, sir.

Mr. HUGHES.—I offer this paper in evidence.

Mr. SACHSE.—We object as incompetent, irrelevant and immaterial.

(Deposition of Captain Christian Peterson.)

(Paper marked Libelants' Exhibit "F21" and returned herewith.)

Q. You may examine the paper which has been marked Libelants' Exhibit "F22" and state what that is?

A. That is for tackles and ropes that were lost when the ship smashed us and we had to replace them on account of the collision.

Q. Were the items on that bill rendered necessary on account of the collision for the repairing of the ship?

A. Yes, sir.

Q. Are the charges reasonable? A. Yes, sir.

Q. Was the bill paid? A. Yes, sir.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We object as incompetent, irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F22" and returned herewith.)

Q. You may examine the several bills which have been marked Libelants' "F23" and state what they represent?

A. This is for meat and vegetables.

Q. Were these meats and vegetables used on the sailing vessel when she was repaired?

A. Yes, sir.

Q. Were they necessary for the support of the crew during that period? A. Yes, sir.

(Deposition of Captain Christian Peterson.)

Q. The items were reasonable items and the charges reasonable? A. Yes, sir.

Q. Were they paid? A. Yes, sir.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We object as irrelevant, and immaterial.

(Paper marked Libelants' Exhibit "F23" and returned herewith.)

Q. You may examine the paper which has been marked Exhibit "F24" and state what that is—I will ask you what the last three items represent?

A. That is for bringing us coal and supplies while tied up at the buoy at Seattle.

Q. The last three items on this bill do not belong to the repair of the "Stimson" from the injuries caused by the collision? A. No, sir.

Q. But this \$15 on this bill are for the use of the "Stimson" as represented there?

A. For bringing coal and water and provisions from the shore to the schooner.

Q. Was it necessary account of this collision?

A. Yes, sir.

Q. The total amount then of this bill for the carrying of coal and supplies to you was occasioned by the collision and amount to \$213.30? A. Yes, sir.

Q. The balance of that bill was not intended to be included in the necessary cost of the repairs of this ship and damages occasioned by the collision?

(Deposition of Captain Christian Peterson.)

A. No, sir.

Q. Was the bill paid? A. Yes, sir.

Mr. HUGHES.—We offer the bill in evidence.

Mr. SACHSE.—We object as irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F24" and returned herewith.)

Q. You may examine the paper which has been marked Exhibit "F25" and state what the two items under date of December 30th and 31st on this bill represents, amounting to \$12?

A. That is for bringing Captain Burns off for surveying that is \$5 and furnishing 1400 gallons of water \$7, that was on the 30th and 31st of December.

Q. What was the necessity of bringing that water?

A. To supply the crew and the donkey.

Q. During the period of unloading and repairing?

A. Yes, sir, and unloading.

Q. Was that paid? A. Yes, sir.

Q. Were the charges reasonable? A. Yes, sir.

Mr. HUGHES.—I offer this paper in evidence.

Mr. SACHSE.—I object as incompetent, irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F25" and returned herewith.)

Q. You may examine the bill which has been marked Libelants' Exhibit "F23"?

(Deposition of Captain Christian Peterson.)

A. This is the freight bill for the wire rigging.

Q. Was that bill paid to the Great Northern Road?

A. It was.

Q. Was the freight on the wire rigging?

A. It was.

Q. Was that wire rigging necessary for the repair of that ship?

Mr. HUGHES.—We offer this bill in evidence.

Mr. SACHSE.—We object as irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F26" and returned herewith.)

Q. You may examine the paper which has been marked Libelants' Exhibit "F27" and state what that is.

A. That is freight on rigging and turn buckles, from San Francisco to Seattle.

Q. Was that paid? A. Yes, sir.

Q. Was the rigging necessary for the repair of the ship? A. It was.

Mr. HUGHES.—We offer this paper in evidence.

(Paper marked Libelants' Exhibit "F27" and returned herewith.)

Q. Examine the paper which has been marked Libelants' Exhibit "F28" and state what that represents?

A. That is for boat hire bringing the riggers from Ballard on board of the schooner, on the Sound, when she was loading.

(Deposition of Captain Christian Peterson.)

Q. Was that necessary on account of the collision?

A. Yes, sir.

Q. Was it a reasonable charge? A. Yes, sir.

Q. Was it paid? A. Yes, sir, it was.

Q. Was it necessary for the repair of the ship?

A. Yes, sir.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We object as irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F28" and returned herewith.)

Q. You may examine the paper which has been marked Libelants' Exhibit "F29" and state what that is.

A. That is boat hire for the crew and machinists to repair the windlass after it was put in. There was some little things to be done to it after Moran had repaired it in Ballard.

Q. Were these items all necessary to repair the ship and the damages caused by this collision?

A. It was.

Q. The items reasonable? A. Yes, sir.

Q. Were they paid?

A. Yes, sir, they were paid.

Mr. HUGHES.—We offer this paper in evidence.

Mr. SACHSE.—We object as irrelevant and immaterial.

(Deposition of Captain Christian Peterson.)

(Paper marked Libelants' Exhibit "F29" and returned herewith.)

Q. You may examine the several bills fastened together which have been marked Libelants' Exhibit "F30" and state what they represent?

A. That is for wood, the freight for rigging to Ballard and for towage and dragging for an anchor in Shilsboal Bay?

Q. This is for the services for the tug "Mountaineer"?

A. Yes, sir.

Q. The tug "Mountaineer" is owned by the Stimson Mill Company? A. Yes, sir.

Q. The services, I see one of them here is for spars?

A. Yes, sir, for the masts.

Q. They were purchased from the Stimson Mill Company? A. Yes, sir.

Q. Were the services rendered here by the tug necessary on account of the collision that occurred to the schooner with the "Rickmers"?

A. Yes, sir, with the exception of the last bill there, dragging for the anchor, I do not know anything about that.

Q. The steamer "Stimson," what is that—is that a steamer that towed the spars over to it?

A. Yes, sir.

Q. And the steamer "Stimson" and the "Mountaineer" both belong to the Stimson Mill Company?

A. Yes, sir.

(Deposition of Captain Christian Peterson.)

Q. And they both rendered services that are enumerated in this bill? A. Yes, sir.

Q. The last item of \$8 was for dragging upon the anchor?

A. Yes, sir. I do not know anything about that.

Q. But the other items were for?

A. Supplies for the vessel.

Q. Were they necessary? A. Yes, sir.

Q. Services and materials that were mentioned in these bills were all required on account of the collision?

A. Yes, sir.

Q. Were the prices reasonable? A. Yes, sir.

Q. They were paid?

A. Yes, sir, they were paid.

Mr. HUGHES.—We offer the bill in evidence.

Mr. SACHSE.—We object as irrelevant and immaterial.

(Paper received and marked Libelants' Exhibit "F30" and returned herewith.)

Q. You may examine the paper which has been marked Libelants' Exhibit "F31" and state what that represents?

A. That is for hanging up the rigging, setting it up.

Q. Was that necessary and rendered necessary by reason of the collision? A. Yes, sir. It was.

Q. Are the charges there reasonable?

A. Yes, sir.

(Deposition of Captain Christian Peterson.)

Q. Were they paid.

A. Yes, sir, they were.

Mr. HUGHES.—I offer the paper in evidence.

Mr. SACHSE.—I object as irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F31" and returned herewith.)

Q. Examine the paper which has been marked Libelants' Exhibit "F32" and state what that represents?

A. That is the bill for the rigging and the turn-buckles from San Francisco?

Q. The items enumerated in this bill all used in the repair of this ship? A. Yes, sir.

Q. In making the repairs rendered necessary by this collision? A. Yes, sir.

Q. Are they reasonable charges? A. Yes, sir.

Q. Were they paid?

A. They were, Mr. Hughes.

Mr. HUGHES.—I offer this paper in evidence.

Mr. SACHSE.—I object as irrelevant and immaterial.

(Paper marked Libelants' Exhibit "F32" and returned herewith.)

Q. Examine the several bills in the paper which has been marked Libelants' Exhibit "F33" and state what they are?

A. This first bill was for material that was broken in the collision and also the freight from Seattle to Port Blakely. This is for a donkey-man who was scalded

(Deposition of Captain Christian Peterson.)

while setting up the rigging at Port Blakely, scalded in the donkey-room. It is a doctor's bill and this here is a freight bill for bringing the supplies from Seattle to Port Blakely.

Q. For what purposes and what kind of supplies?

A. Beef and chain plates.

Q. Generally speaking were these supplies for the maintenance of the crew and the repair of the ship?

A. Yes, sir.

Q. During the period that she was undergoing repair?

A. Yes, sir.

Q. The last bill?

A. Is a store bill at Port Blakely.

Q. What were these stores for represented by the last one of these bills?

A. They were to supply the crew and board while the vessel was loading and for ship chandlers while setting up the rigging.

Q. Well, it was for the supplies for the crew and for material and supplies for the repair of the ship?

A. Yes, sir.

Q. The supplies used for the ship in making the repairs?

A. Yes, sir.

Q. And in maintaining the crew during the period while the repairs were going on?

A. They were.

Q. While the crew were engaged in rendering services in these repairs?

A. Yes, sir.

(Deposition of Captain Christian Peterson.)

Q. I will ask you if they were all necessary by reason of this collision. A. Yes, sir, they were.

Q. State whether the charges were all reasonable charges? A. Yes, sir, they are.

Q. Were they paid? A. They were.

Mr. HUGHES.—We offer the paper in evidence.

Mr. SACHSE.—We renew our last objection.

(Paper marked Libelants' Exhibit "F33" and returned herewith.)

Q. I will ask you to examine Exhibit "C" and state what that represents?

A. That represents the repair of the windlass and the placing of the turnbuckles that were broken in the collision.

Q. Furnished by Moran Brothers?

A. Yes, sir.

Q. Were they necessary to repair the ship for the damages caused by the collision? A. They were.

Q. Was the price reasonable? A. Yes, sir.

Q. Was the bill paid? A. It was.

Q. You may examine Exhibit "E" and state what that represents.

A. That represents the repair of the vessel caused by the collision of the "Rickmers," the repair of her hull.

Q. Were the items here furnished used in the repair of the ship? A. Yes, sir.

Q. Were these charges reasonable?

A. Yes, sir.

(Deposition of Captain Christian Peterson.)

Q. Was the bill paid? A. Yes, sir.

Q. Now, Captain, any of the items represented by the bills that you have identified here, I will ask you to state whether or not these materials and supplies were all under your supervision? A. Yes, sir.

Q. You were master in immediate charge of the ship during all of this time? A. Yes, sir.

Q. I will ask you whether all that you have identified were for materials, supplies and provisions and for labor? A. Yes, sir.

Q. Rendered necessary for the work of repairing this ship, including the maintenance of the crew while engaged in that manner, and occasioned by the collision?

A. Yes, sir; they are.

Q. You have already stated that the total time lost by this collision from the time of the collision until your ship was prepared and its cargo restored to the extent that it was originally at the time of the collision was ninety days. A. Yes, sir.

Cross-examination.

Q. (Mr. SACHSE.) Captain, in this Exhibit "F1," which is dated Ballard, December 9, 1901, the last sheet having a total of \$1,301.46, what does that represent?

A. That represents the total of the amount.

Q. But for what?

A. This is for wages from December 10 to January 10.

Q. To January 10?

(Deposition of Captain Christian Peterson.)

A. Yes, sir; this sheet represents that amount.

Q. So that you include 15 days before the accident in this account as shown here? A. Yes, sir.

Q. Of the wages of the men? A. Yes, sir.

Q. Making it part of this \$1501?

A. Yes, sir; I think so. Yes, that is right.

Q. The same is true on the other side of that long sheet? A. Yes, sir.

Q. How about the items of December 31, for instance labor unloading at Seattle \$244.80, is that included in any of these other bills? A. No, sir.

Q. That is not included?

A. No, sir. There is the bill that is for this labor that I O. K.'d.

Q. That is not included in this bill?

A. This is my sheet for the whole disbursement. It is copied from the other bills.

Q. Then you mean to be understood that this sheet is simply a summary of the others? A. Yes, sir.

Q. The sheet marked Exhibit "F1"?

A. Yes, sir. That sheet is self-explanatory.

Q. What is the capacity of the "Stimson," how much lumber could she carry?

A. She carries a little over 900,000.

Q. Well, now you spoke about—

A. Say about 920 or 950, but about 920,000 on an average.

Q. The usual price is \$7 per thousand?

A. Yes, at that time.

(Deposition of Captain Christian Peterson.)

Q. From here to San Pedro? A. Yes, sir.

Q. What freight do you bring up from San Pedro?

A. Coming up in ballast generally; would sometimes bring a little freight.

Q. It takes two months to make the round trip?

A. Yes, sir.

Q. The total earnings of your schooner for two months, the gross earnings would be \$6,856; is that correct? A. Yes, sir.

Q. How much would it cost to load that lumber on the schooner, that 900,000 feet of lumber?

A. Well, it costs us about 40 cents a thousand; that is, besides the sailors. I do not know how we figure that.

Q. How much does it cost to unload it, outside of the cost of the sailors.

A. It will cost us—excuse me, we have to give the men 40 cents an hour and two meals a day. I do not know what that would amount to but that is what they charge us here in Ballard for loading the vessel. I don't know how much that amounts to.

Q. If you paid 40 cents a thousand for loading, the loading would cost you about \$380.

A. Something like that.

Q. How much would it cost you to unload?

A. It would be about the same.

Q. About the same for unloading? A. Yes, sir.

(Deposition of Captain Christian Peterson.)

Q. Now, 80 cents per thousand would represent the cost of loading and unloading at both ends?

A. Yes, sir.

Q. That is correct, is it?

A. I made a mistake there; it is forty cents an hour; I did not mean 40 cents a thousand feet.

Q. Can you tell how much it would cost per thousand to load it, how much it would cost to load 950,000 feet of lumber on the "Stimson"?

A. We load her for about 20 days.

Q. Cannot you give us in money what it would cost to load her?

A. I never figured it that way.

Q. Was it as much as \$1,000?

A. No, not quite so much as that.

Q. Was it \$500? A. Yes, sir.

Q. Seven hundred and sixty dollars?

A. Maybe about \$800.

Q. And the same amount to unload it?

A. Yes, sir.

Q. That would be \$1,600? A. Yes, sir.

Q. How much crew did you carry?

A. We had ten all told.

Q. And what is the wages of the crew per month including yourself?

A. Five hundred and fifteen dollars, exactly, per month.

(Deposition of Captain Christian Peterson.)

Q. Now, there was some cost of provisions for these few months?

A. The stores and the ship's chandlery amount to about \$600 or \$700.

Q. Well, then, the cost of making the round trip from here to San Pedro with 950,000 feet of lumber is, about \$3,300.

A. Yes, sir; that is about as near as I can tell.

Q. So, that the net earnings of the schooner within any two months would not exceed over \$3,500?

A. No, something like that.

Q. That is correct, is it?

A. That is pretty near, as near as I can guess at it.

Q. You do not count anything in the way of interest or anything like that? A. No.

Q. How long have you been a ship's captain?

A. About 18 years.

Q. How old are you, Captain? A. Forty-six.

Q. Have you ever had charge of large ships, such as the "Rickmers"? A. No, sir.

Q. What is the largest ship that you have ever been on? A. The "Stimson."

Q. She is the largest that you have been master of?

A. Yes, sir.

Redirect Examination.

Q. (Mr. HUGHES.) Captain, I want to call your attention to Exhibit "F1." The back of that exhibit con-

(Deposition of Captain Christian Peterson.)

tains the payroll of the regular crew there, does it, from December 9th to—that is, of these men who were serving between December 9th and March 3d?

A. There are different dates there. It could not be taken out of these dates.

Q. There are some of these that run as late as March 3d?

A. Yes, sir. The dates are all included on the other bills. I have given a memorandum of these bills.

Q. Now, in some instances these commence as early as the 10th of December, but they do not any of them run later than March 9th? A. No.

Q. I will ask you whether in these cases you carried in the period from March 9 to March 25 when you were loaded as far as you had been at the time?

A. No, I paid the crew up until March 9 or 10.

Q. So that while you commenced it on December 10, 15 days before the 25th, you did not charge for the corresponding 15 days between March 10th and 25th?

A. No.

Q. When you were reloading?

A. No, it it was charged up on my next statement, the statement for the coming trip.

Q. But that statement is not included in these bills?

A. No, sir.

Q. So that the actual amount of time is only the time lost by reason of this collision? A. Yes, sir.

Q. And while in this bill you have included 14 days before the collision?

(Deposition of Captain Christian Peterson.)

A. We have not included 15 days after March 10th.

Q. After March 10th to 25th, after you had the vessel reloaded as far as she was before the collision?

A. Yes, sir.

Q. So that there is no excess charge?

A. No, sir.

Q. And the same rate of wages prevailed between March 10th and 25th?

A. The same rate of wages and the same rate of wages still.

Q. (Mr. SACHSE.) When was the vessel reloaded?

A. I forget exactly the date.

Q. I understood you to say it was March 25th?

A. At that time we had the same amount of lumber in.

Q. Do you usually take down 950,000 feet of lumber to San Pedro? A. Yes, sir, 953,000 a couple of times.

Q. I mean the usual load? A. Say 940,000.

Q. How was it the trip just previous to the collision?

A. Nine hundred and fifty-three thousand at that time.

(Testimony of witness closed.)

Mr. C. D. STIMSON, a witness called on behalf of the libellant, being duly sworn, testifies as follows:

Q. (Mr. HUGHES.) Mr. Stimson, for the purpose of abbreviating the examination as much as possible, I will ask you if you have gone over and personally examined all of these bills that are introduced in evidence under the various exhibits? A. Yes, sir.

(Deposition of C. D. Stimson.)

Q. Now, you are one of the libelants, are you?

A. Yes, sir.

Q. Have these bills been paid?

A. Yes, sir, all of them.

Q. Paid by the libelant?

A. Yes, sir, all of them in full.

Q. Before payment did they pass under your personal supervision to ascertain their correctness?

A. Yes, sir.

Q. Did you ascertain whether they were correct before making the payment?

A. Yes, sir.

Q. Did you find them so?

A. Yes, sir.

Q. I will ask you for the purpose of the convenience of the Court when it comes to going over the testimony, to examine this statement which I have marked Libelants' Exhibit "G" and state whether or not that is a summary of all the bills that are introduced as exhibits in this case, the various items of the expense incident to the collision?

A. Yes, sir, these are the amounts we paid.

Q. Now, in the testimony of Captain Peterson, two bills were withdrawn from these exhibits representing \$11.50 and one other that appears here has been stricken out, amounting to \$266.92, and deducting these three bills leaves a total of \$9,388.15?

A. Yes, sir, that is what we paid.

Q. The balance of the items, the summary of the bills that are put in evidence?

A. Yes, sir.

Q. And the total amount paid by you as shown by these various bills is \$9,388.15?

A. Yes, sir.

(Deposition of C. D. Stimson.)

Mr. HUGHES.—We offer in evidence simply as a summary of the exhibits and for the convenience of the Court this paper identified by the witness.

Mr. SACHSE.—We object as incompetent as to the bills referred to, but we have no objection on the ground of it being a summary.

(Paper marked Libelants' Exhibit "G" and returned herewith.)

Q. Now, Mr. Stimson, how long has the schooner "Stimson" been launched, how old is the ship?

A. I do not remember the date when she was launched, but it is something like 14 or 15 months before the time of the accident.

Q. Did she have any injuries prior to that time?

A. No, sir, not that I know of.

Q. What trade was she engaged in?

A. In carrying lumber from our mill coastwise to San Pedro and down there.

Q. What was the average period consumed in making a round trip, a round voyage?

A. We made 6 trips in 12 months, a little over six, pretty near six and a half.

Q. Was she under charter at the time of the collision?

A. Yes, sir.

Q. For carrying lumber to San Pedro?

A. Yes, sir.

Q. What is the charter rate per thousand feet?

A. Seven dollars per thousand.

(Deposition of C. D. Stimson.)

Q. On the lumber? A. Yes, sir.

Q. What was the charter rate for the preceding trip?

A. Seven dollars.

Q. How much time did the preceding trip occupy?

A. I do not remember the date but very close to 60 days. I think a little less.

Q. Do you know what the net earnings, that is, after paying all of the expenses of the preceding voyage was, what the net earnings of the "Stimson" was?

A. It was very close to \$3,500. I think a trifle over \$3,500.

Cross-examination.

Q. (Mr. SACHSE.) That was carrying 950,000 feet?

A. That was carrying—I do not just remember what cargo she had on at that time but I remember he turned in a little over \$3,500.

Q. At the time of the collision she was loaded only to the extent of 650,000?

A. She had on 650,000 and she was partially loaded.

Q. And as near as you can give the profits, what is the usual profits that the "Stimson" has made on the round trip from here to San Pedro?

A. I never have made an average of it.

Q. Would it average as much as \$3,500?

A. At \$7 a thousand, yes, it would.

Q. Well, have you been paid \$7 a thousand?

A. We got \$7 a thousand for a number of trips previous.

(Deposition of C. D. Stimson.)

Q. And that would be an estimate, \$3,500, for a round trip? A. Yes, sir.

Q. In 60 days?

A. In 60 days, yes. We made six trips in 12 months and a little over.

Q. You gentlemen had the schooner built?

A. Yes, sir.

Q. What is the cost price of the schooner?

A. Between \$55,000 and \$56,000 was the cost.

Q. What was the tonnage?

A. Six hundred and five tons, about.

(Testimony of witness closed.)

Mr. FRED S. STIMSON, a witness called on behalf of libelants, being duly sworn, testifies as follows:

Q. (Mr. HUGHES.) You are a member of the firm of Stimson Brothers, the libelants in this case?

A. Yes, sir.

Q. When was the "Stimson" built? A. 1900.

Q. What time?

A. She was launched in August.

Q. Had she ever received any accidents prior to her collision with the "Rickmers"?

A. No, sir.

Q. What condition was she in prior to that time?

A. First class.

Q. You are familiar with it? A. Yes, sir.

Q. Been on it just prior to this? A. Yes, sir.

(Deposition of Fred S. Stimson.)

Q. Do you remember what the net earnings of the "Stimson" was for the voyage just preceding?

A. About \$3,500.

Q. Did she average that? A. Yes, sir.

Q. She had a charter at that rate at that time when she was loading? A. Yes, sir.

Q. Was it for a full cargo? A. Yes, sir.

Q. That is her charter authorized her to take at that rate all her carrying capacity?

A. All she could carry.

Q. The average period for her trip was how long?

A. Two months.

Q. And her loss of time by reason of this accident?

A. There was three months.

Q. Now, has any part of these damages been paid by the "Rickmers" or anyone else? A. No, sir.

Q. And including in the loss and damage to the vessel her earning capacity, none of that has ever been repaid?

A. No, sir.

Q. The vessel was not able to earn anything during the period of ninety days while undergoing repairs and reloading? A. No, sir.

Q. Have you examined all these bills, Mr. Stimson?

A. Yes, sir.

Q. Do you know whether they were paid?

A. Yes, sir.

Q. They were all paid? A. Yes, sir.

(Deposition of Fred S. Stimson.)

Cross-examination.

Q. (Mr. SACHSE.) Who built the "Stimson"?

A. She was built under our supervision at Ballard.

Q. Who built her? A. Tom Reid.

Q. Tom Reid, the shipbuilder over there?

(Testimony of witness closed.)

(At this time further proceedings were adjourned to be taken up by agreement.)

[Title of Court and Cause.]

Testimony.

Proceedings had before United States Commissioner Clifford, at Tacoma, Washington, December 16th, A. D. 1903, 11 o'clock A. M.

Captain BURLEIGH, a witness for and on behalf of respondent, being first duly sworn by the Commissioner, testified as follows, to wit:

Direct Examination.

(By Mr. ASHTON.)

Q. What is your occupation, Captain?

A. I am manager of the Tacoma Ship and Barge Company.

Q. Do you operate tugs on the Puget Sound?

A. Yes, sir.

Q. How many years? A. Four.

Q. I mean how long have you been operating them?

A. About ten years.

(Testimony of Captain Burleigh.)

Q. For ten years last past? A. Yes, sir.

Q. To what extent during that time have you been engaged in towing sea-going vessels from the Straits of Juan de Fuca into ports on Puget Sound?

A. Well, now, we have towed quite a number of vessels, but our work has been mostly local. What I mean by that is, around from here to ports inside of Port Townsend.

Q. Are you familiar with the customs in all ports of Puget Sound, at all ports on the Sound, as to the extent, if at all, to which captains of tugboats act as pilots for the vessel being towed by them?

Mr. HUGHES.—I desire to object to that as irrelevant, incompetent and immaterial, and for the reason that no general custom can have any application to the case of the "Rickmers."

(It is agreed by counsel that all like questions shall be considered as being objected to by counsel without the objection being made each time.)

Q. (Question read.) Are you familiar with the custom in all parts of Puget Sound, at all ports on the Sound, as to the extent, if at all, to which captains of tugboats act as pilots for the vessel being towed by them?

A. I don't know how to answer that for the reason that there are no such things on Puget Sound as pilots. There is no such things as pilots. They are not compulsory; not recognized. With regard to a tugboat towing a ship, a ship will come to Puget Sound a perfect

(Testimony of Captain Burleigh.)

stranger, and the tugboats go and put her hawser on her, and relies entirely upon the captain's local knowledge to take her where he wants to, put him at anchorage, or whatever the case may be; or he may have to go to Tacoma or Seattle; and the captain of the ship in nine cases out of ten, has no more idea where Tacoma is than the man in the moon; and he relies entirely on the captain of the tug to put him there. But whether the captain of the tug would be considered a pilot of the ship or not, I wouldn't be prepared to say.

Q. Do you know whether that was the condition of affairs as to the towing of vessels on Puget Sound in the month of December, 1901?

A. That has been the case for the last ten years to my knowledge, and probably years and years before that.

Q. To what extent does that *understand or custom* enter into the compensation which is paid tugboats for their services, if it is considered in fixing the compensation?

A. Well, you would have to explain that a little more thoroughly. I don't understand that question at all.

Q. Well, when you contract with the master of a ship, or with her owner to tow her into the Sound, to what extent, if at all, is it contemplated that you are to pilot her as well as to tow her?

Mr. HUGHES.—I want to add the further objection that the contract in each case would be the best evidence

(Testimony of Captain Burleigh.)

of the intention of the parties as to the significance and effect of the contract.

Q. (Question read.)

A. That is a pretty hard proposition, Mr. Ashton, for this reason, that the rates of towage on Puget Sound are a scale of rates which was adopted before I came into the business. We have towed by those rates. But whether in the formation of those rates any account was taken of the pilot's services that is performed by the master of the tug, I am not prepared to say. I was not a party to the making of the rates. The rates were made on Puget Sound before I came into the business, and we have adopted them and towed by them.

Q. (By Mr. ASHTON.) That is all.

Mr. HUGHES.—No cross-examination.

(Testimony of witness closed.)

ALEXANDER BAILEY, a witness for and on behalf of respondent, being first duly sworn by the Commissioner, testifies as follows, to wit:

Direct Examination.

(By Mr. ASHTON.)

Q. Where do you reside?

A. Tacoma, Washington.

Q. What is your occupation?

A. Shipping merchant?

Q. How long have you been shipping merchant?

(Testimony of Alexander Bailey.)

A. Twenty-three years.

Q. How long on Puget Sound?

A. Sixteen years.

Q. What business are you connected with, or is it your own business?

A. Yes, sir; I am connected with it. I am a partner in the business. I am connected with it.

Q. What business is it?

A. Well, we act as ship's agent.

Q. What is the name of the firm?

A. Balfour, Guthrie & Company.

Q. In that business, have you become familiar to any extent with towing and piloting of ocean-going sailing vessels from the Straits into Puget Sound?

A. Yes, sir.

Q. How have you become familiar with that?

A. Because when ships are sent to us, we pay all their accounts, we see what those disbursements are; and we are in touch with the captains knowing what those disbursements are for; and those things come under my observation generally.

Q. Was that the condition of affairs in the year 1901?

A. That has been the condition of affairs for the last sixteen years.

Q. Now, what class of ships have you been handling and paying charges and disbursements for?

A. All kinds of sailing ships; full-rigged ships, four-mast barks, four-mast ships; owned by the nations who send ships here—Germany, England, Italy; all nations.

(Testimony of Alexander Bailey.)

Q. Who has made the contracts for towage or pilotage into the Sound?

A. We have made the contracts sometimes. They have been usually made in England by the tugboat company direct with the owners, through the agent of the tugboat company?

Q. What is the general custom—what was the usual custom on Puget Sound, in December, 1901, in the manner of piloting ships to be towed from the sea into Tacoma or other points on the Sound?

Mr. HUGHES.—It is understood that the objections urged to the testimony of Mr. Burley are renewed to the testimony of Mr. Bailey, so that I do not need to keep repeating them.

Mr. ASHTON.—Certainly we will agree to that. Let the record show that your objections are made to each of these questions.

A. Now, pilotage is not compulsory in Puget Sound, and captains of towboats act as pilots.

Mr. ASHTON.—Take the witness.

Mr. HUGHES.—No cross-examination.

W. O. SACHSE, a witness for and on behalf of respondent, being first duly sworn by the Commissioner, testified as follows, to wit:

Direct Examination.

(By Mr. ASHTON.)

Q. You are one of the proctors in this case?

A. Yes, sir, I am.

Q. Did you have occasion to examine the log-book of the "Robert Rickmers" at the time of preparing this case for hearing? A. Yes, sir.

Q. Do you recall examining the log or such part thereof, as narrated the event of her dragging her anchors and colliding with the "Stimson"? A. Yes, sir.

Q. In December, 1901? A. I do.

Q. In what language was the log written?

A. In German.

Q. Are you familiar with the German tongue and able to read and write it?

A. I am able to read it and translate it to some extent.

Q. Do you know where that log-book is now?

A. The log-book was taken away by the captain of the "Robert Rickmers," after his testimony was taken.

Q. Do you know whether or not the contents of the log as far as it pertains to this experience of the "Robert Rickmers" with the "Stimson" in December, 1901, was translated?

A. It was, I think, to the best of my recollection.

Q. Was it translated?

(Testimony of W. O. Sachse.)

A. Yes, sir.

Q. By whom?

A. By myself; and my recollection is that the first mate assisted me and was present at least, when I was translating it—either the first mate or the captain; it was one or the other.

Q. Was he German?

A. Yes, sir; and able to translate in English, with my assistance.

Q. And able to translate German script?

A. Yes, sir.

Q. I hand you this typewritten paper, consisting of two sheets, and ask you whether or not you can identify the same?

A. The paper which I have in my hand is a correct translation of the log of the "Robert Rickmers."

(Paper marked Exhibit 6.)

Mr. ASHTON.—We offer the same in evidence, and request that it be admitted.

Mr. HUGHES.—I desire to object to the introduction of this copy in evidence, first, upon the ground that the original log itself could not be admitted as competent evidence, it being a self-serving statement of the master and officers of the ship; second, because no showing has been made as to the time when the entries were made in the log, or by whom these entries were made, or whether the entries were truthfully or correctly made in the said log, and no opportunity is given to examine or test the au-

(Testimony of W. O. Sachse.)

thenticity of the facts purporting to be recorded in the log entry; and because the statements of facts contained in the alleged copy of the log have not the sanction of an oath, so as to entitle them to be received or considered as evidence.

Mr. ASHTON.—You do not object to it on the ground that it is not an original?

Mr. HUGHES.—I don't believe I can make any other objections more than I have.

Mr. ASHTON.—We ask that it be filed as an exhibit.
(Paper filed.)

Mr. ASHTON.—You may cross-examine.

Cross-examination.

(By Mr. HUGHES.)

Q. Mr. Sachse, you are the proctor who conducted the examination of the officers and crew of the "Robert Rickmers" at the time their testimony was taken?

A. Yes, sir.

Q. Representing the claimants of the "Robert Rickmers" in this proceeding?

A. Yes, sir.

Q. At the time of that examination before the Commissioner in his office in this city, you had already made this copy of the log which you have just identified, did you not?

A. That I do not remember.

Q. You had already made a copy of the log, hadn't you?

A. I don't remember.

(Testimony of W. O. Sachse.)

Q. At the time of the examination of these witnesses, wasn't the original log brought into the court-room where the examination was had?

A. My recollection is it was.

Q. At that time did you not present this copy or one exactly like it of that log, and consider the introduction of the testimony?

A. Didn't I present it? How do you mean?

Q. Read to him, and did not the commissioner consider and discuss the question of the introduction of that testimony in evidence?

A. I don't remember anything about that.

Q. As a matter of fact, was it not then disclosed that the entry contained here in the following language: "Anchorage ground did not allow us to slack more chain as we have already come too near ships lying astern of us," was an interlineation in the original log-book?

A. I don't remember of any subject of that kind coming up.

Q. Do you remember that these words were an interlineation? A. No, sir, I do not.

Q. Wasn't it because you were satisfied that the log entries were not made at the time and that certain of them were subsequently interlined, that you did not introduce them in evidence at the time, when you had the officers there by whom the entries were made?

A. No, sir.

Q. What was your reason for not introducing the

(Testimony of W. O. Sachse.)

original log or a copy of it at the time when it could be inspected and examined, and the persons who made the entries put upon oath regarding the entries and examined with respect to them?

A. I don't know what reason actuated me; at this time I don't know that I had any reason. Possibly I overlooked the matter.

Q. You think the last statement, "possibly you overlooked the matter" is the correct one?

A. It might be.

Q. Don't you think it is not, however, the correct one?

A. I don't remember anything else about it, Mr. Hughes. It is nearly two years ago since these transactions took place.

Q. Do you remember how long that testimony was taken before the ship sailed, the "Robert Rickmers"?

A. I don't remember positively, but my recollection is about a week or ten days, or some such matter.

Q. The last testimony was taken only two or three days before it sailed, wasn't it? A. No, sir.

Q. And it was commenced to take the testimony then for the purpose of obtaining it before the leaving of the ship? A. It may be correct, yes, sir.

Q. As a matter of fact, do you now recall that certain of these matters that are here appeared by way of interlineation in the original log entries?

(Testimony of W. O. Sachse.)

A. I have no recollection of that kind at all; not the slightest.

Q. Have you any recollection as to the contrary?

A. I cannot say that I have.

Q. Do you remember of ascertaining whether you ascertained or not at the time in whose handwriting those entries were made?

A. Only from hearsay. They were the captain's, is my recollection.

Q. As a matter of fact, did the captain make the entries?

A. Is that your recollection, that the captain made the entries in the log?

A. I don't know whether he did, no. Simply have to take that on hearsay.

Q. That is all.

Redirect Examination.

(By Mr ASHTON.)

Q. In your admiralty practice, you have become familiar with all ship's logs, haven't you, with the writing of logs, more or less? A. Yes, sir.

Q. What was the appearance of this log; how did it compare with the first officer's log?

A. It seemed to be regular on its face, as near as I could see, in the translation there, I think. We did not put in the signatures, which ought to be put in in the

(Testimony of W. O. Sachse.)

translation. The entries were signed by the captain and the first mate, I think, also.

Q. That is all.

Recross-examination.

(By Mr. HUGHES.)

Q. You say you are familiar with the logs? Are the log entries made by the captain?

Mr. ASHTON.—We object to that until there is some statement as to which log is referred to.

Q. You are familiar with the practice of making logs to know whether the mate made this log?

A. I only know that from hearsay.

Q. You have been advised by counsel in respect to the two kinds of logs, the official log and the mate's log?

A. This was the official log.

Q. Did you ever see the mate's log?

A. In this case?

Q. Yes, sir. A. That I don't remember.

P. J. FRANSIOLI, a witness for and on behalf of respondent, being first duly sworn by the Commissioner, testified as follows, to wit:

Direct Examination.

(By Mr. ASHTON.)

Q. Did you have any connection with the German bark "Robert Rickmers" when she was on the Sound here in December, 1901? A. Yes, sir.

(Testimony of P. J. Fransioli.)

Q. In what way were you identified with that ship?

A. We were the ship's agents.

Q. Have you any knowledge of the damage which was caused to the "Robert Rickmers" by her colliding with the "Stimson"?

A. Yes, sir.

Q. How did you obtain your knowledge?

A. From paying the damage accounts.

Q. And in what other way, if any?

A. From adjusting and attending to the ship's business, and the captain told me what the damage was, and I O. K.-ing the vouchers as they came in, and instructing me to pay them as they came in.

Q. What became of those vouchers, do you know?

A. Yes, sir, the vouchers were all sent to the owners.

Q. Did you preserve any record or statement of the amounts you disbursed?

A. Yes, sir.

Q. As such agent?

A. Yes, sir.

Q. Have you that with you?

A. I have a copy of the original disbursement account with me; yes, sir.

Q. What kind of a copy?

A. I have a copy taken from the press copy of the original account sent to the owners.

Q. A letter-press copy?

A. No, sir, I have a written copy of the original—of the press-copy of the original account sent to the owners.

(Testimony of P. J. Fransioli.)

Q. Let us see what you have? Where is your letter-press book? A. That I did not bring.

Mr. ASHTON.—We want that, unless Mr. Hughes will not object to this.

Mr. HUGHES.—I won't make any objection to this that I would not make to the original letter-press copy. I am not making any agreement, understand; I simply won't make any objection to this that I would not make to the letter-press copy.

Q. Is that a true copy of your letter-press copy of the original?

A. Yes, sir, I compared it myself this morning.

Q. I notice—that is the O. K. of the captain of the "Rickmers" made at the time? A. Yes, sir.

Q. Was that O. K. made in your presence?

A. To the best of my knowledge. It was two years ago, but I am very positive it was.

Q. And to what extent did that O. K. guide you in paying bills? A. It gave me authority to pay bills.

Q. Have any of the bills, the original bills, or has the original statement been in your possession since that time? A. No, sir.

Q. Where were they sent? To the owners?

A. My recollection is Hamburg, where they are.

Q. They were sent outside of the United States?

A. Yes, sir.

(Testimony of P. J. Fransioli.)

Q. Do you know whether they were sent to some port in the German Empires?

A. Yes, sir, I know they were sent to some port in the German Empire.

Q. Do you know whether the amounts appearing upon this paper were actually paid to the parties there, to whom they are entered as having been paid?

A. Yes, sir.

Q. Do you know whether—how do you know that?

A. Because they were paid from my office.

Q. Did you pay them yourself?

A. Yes, sir, that is I signed the checks which paid them, if that is what you want.

Q. What was the amount of bills which you paid that would compose the damages resulting from the “Rickmer’s” collision with the “Stimson”?

Mr. HUGHES.—I object to that: First, as calling for a conclusion and opinion of the witness in respect to the mature and origin of the claims, and causes from which they arose; and I also object to the testimony as not the best evidence, and as incompetent, irrelevant and immaterial.

A. I could not say.

Q. I hand you a paper writing being the statement which you have referred to, and ask you whether or not you are able to make an answer without looking at that statement.

(Testimony of P. J. Fransioli.)

Mr. HUGHES.—I make the same objection; and also for the further reason that it is not a proper memorandum from which the witness may refresh his memory, according to his own previous testimony.

A. (Examining paper.) I think I could pick out some of the items that we cause—some of the items here that we paid, but I could not tell exactly about them.

Q. You mean some of the items that were caused by the collision?

A. No, this account is simply an account of the following amounts that were paid on account of the damages which were caused to the "Rickmers" at that time.

Q. Was that entire bill paid as a result of her collision with the "Stimson"?

Mr. HUGHES.—I wish to make the same objection to that.

A. Yes, sir, as far as I know.

Q. Have you any other statements in your hands, or any other data or entries by you upon this subject, other than this statement? A. No, sir.

Q. And the letter-book of which this is a transcript?

A. That is all; just the letter-book.

Q. This is a true transcript of your letter-book impression? A. Yes, sir.

Q. To what extent is that letter-book impression a fac-simile of the original?

(Testimony of P. J. Fransioli.)

A. It is an exact letter-press copy of the original as returned to the owners.

Mr. ASHTON.—We offer this statement in evidence, but we only offer the following items herein as competent for the purpose of showing such damage as could be the subject of recovery by the “Robert Rickmers” in this action, i. e.:

Ollard Iron Works	\$ 193.39
Puget Sound Iron & Steel Wks.....	1,530.00
Puget Sound Iron & Steel Wks.....	552.84
W. H. Jenkins	795.00
I. M. Larson	920.00
I. M. Larson	40.97
Chandlery, J. C. Todd, Ship Chandler.	439.68
Life boats, etc., Crawford & Reed	389.00
German Consulate	397.00
Cables and telegrams, W. U. Tel. Co...	35.44
Same, Postal Telegraph Co.....	80.66

—All other items, we do not offer or claim.

Mr. HUGHES.—Libelant objects to the introduction and admission of this exhibit and to each item thereof: First, because the testimony is immaterial under the issues in this case. Second, because no proper foundation has been laid for the introduction of this evidence or any of the items mentioned; no testimony having been introduced to show that the materials were actually furnished, or that they were rendered necessary by

(Testimony of P. J. Fransioli.)

reason of the collision, or that the values were the true values thereof; and third because the evidence is not the best evidence. It is not, however, intended to urge any objection to this copy that would not apply to the letter-press copy which the witness has mentioned.

(Paper marked Exhibit No. 7.)

Q. Do you know whether or not the materials and labor, if any, for which these items are charged, were actually furnished to or performed upon the "Robert Rickmers"?

A. Yes, sir; I know they were.

Q. That is all.

Mr. HUGHES.—No cross-examination.

J. GEISLER, a witness for and on behalf of respondent, being first duly sworn by the Commissioner, testified as follows, to wit:

Direct Examination.

(By Mr. ASHTON.)

Q. What official or diplomatic position, if any, Mr. Geissler, do you hold?

A. I am the acting German Imperial German consul for the State of Washington, residing here at Tacoma.

Q. How long have you been German Imperial Consul at this city?

A. Well, I have been acting consul now for about three or three and a half years.

Q. Are you familiar with the German bark "Robert Rickmers"?

A. I am.

(Testimony of J. Geisler.)

Q. Were you called upon by the master of the German bark, "Robert Rickmers" in your capacity as consul, to render any assistance or service to him at the time or after his collision with the "Stimson"?

A. Yes, sir; I was called upon by the captain in my position as consul as well as representative for the owners of the ship, as soon as the captain could reach me after the collision.

Q. How did you become the representative of the owners of the ship?

A. By request of the captain. The captain showed me a cablegram from the owners of the ship in which the owners stated that he should go to the German consul.

Q. And you also acted as their agent?

A. As agent of the owners, yes, sir.

Q. Well, you did do so?

A. Yes, sir, I did.

Q. Were you agent between that and the time that the "Robert Rickmers" left here.

A. I was.

Q. Do you know whether or not the "Robert Rickmers" extended her protest?

A. Yes, sir, the "Robert Rickmers" extended her protest.

Q. Do you know whether or not that protest was ever translated?

A. I don't know if it was or not.

Q. Do you know if there was any translation of the log, of the "Rickmers"?

(Testimony of J. Geisler.)

A. Yes, sir, there were many translations of the log.

Q. There were? A. Oh, yes.

Q. Was Mr. Sachse's translation made under your supervision or in your presence?

A. I know he made at least a part of the translation in my presence.

Q. Did you see the translations?

A. Yes, sir, I saw them.

Q. I show you Exhibit No. 6. Can you identify that as a translation of the ship's log? (Handing witness paper.)

Mr. HUGHES.—I urge the same objection to that that I urged to the testimony of the witness, Mr. Sachse, that is, that I object to the introduction of this log in evidence: First, upon the ground that the original log itself would not be competent evidence, being the self-serving statements of the master and officers of the ship. Second, Because, no showing has been made as to the time when the entries were made in the log, or by whom those entries were made, or whether the entries were truthfully or correctly made in said log, and no opportunity has been given to examine or test the authenticity of the facts purporting to be recorded in the log entry; and fourth, because the statements of facts contained in the alleged copy of the log have not the sanction of an oath so as to entitle them to be received or considered as evidence.

A. This is a translation of the entries of the log-book of the "Robert Rickmers"; as far as I can remember

(Testimony of J. Geisler.)

it is a correct translation, too. There is one point I would like to be permitted to speak about, that I specially remember the captain myself, as well as—

Mr. HUGHES.—Now, wait a moment. I object to any hearsay testimony between the witness and the captain.

Q. Well, we simply ask you now if you can identify this exhibit?

A. That is a translation of the log-book; and as far as I remember, it is a correct one.

Q. You say that you had some conversation with the captain about something in that translation?

A. Yes, sir; I had.

Q. How long did that happen after the collision?

A. About two days, or three days.

Q. How long did it happen after the captain first came to see you?

A. About an hour or two; maybe three hours.

Q. Where is the captain now?

A. I don't know; but I think he is at Bremen, or near Bremen.

Q. Where? A. The captain?

Q. Yes. What country? A. In Germany.

Mr. ASHTON.—I think, Mr. Hughes, that while it may rather be carrying the rule to the extreme, yet in the absence of the captain, it seems to me it might be regarded as a part of the *res gestae* to find out what occurred.

(Testimony of J. Geisler.)

Mr. HUGHES.—I think that under no circumstances could the rule be extended to that length, except as to expressions where made in the extremity of death. The captain was here once and was examined.

Mr. ASHTON.—Yes, but at that time the matter of any statement to the consul did not come up. Did he make that statement to you in your official capacity as consul?

Mr. HUGHES.—I object to that as calling for the conclusion and opinion of the witness as to the purpose and object of the captain in carrying on the conversation with the witness.

A. Shall I answer?

Q. Yes; go on and answer my question. Did he make what you were about to mention to you in your official capacity? A. He did.

Mr. HUGHES.—Let the record show that we make the same objections to that question as heretofore stated.

Q. And also as agent for the owners of the ship?

A. He did.

Q. What particular part of this extract from the log does the statement which you were about to mention refer to?

Mr. HUGHES.—Same objection to that question.

A. I asked the captain—

(Testimony of J. Geisler.)

Mr. HUGHES.—Now, just wait a minute. If the question is understood by the witness to call for this conversation, then I wish to object to the witness answering it upon the ground that it calls for hearsay evidence, and not testimony.

Mr. ASHTON.—The question is what particular part of the statement—not what was said, but which particular part of the statement.

Mr. HUGHES.—I knew the witness was not answering that question as it read, but as he understood it; and that is why I stopped him and interposed my objection.

Q. To what particular part of that extract from the log does the statement of the captain which you were about to mention pertain?

Mr. HUGHES.—We make the same objection to that question. It calls for hearsay, and not evidence.

A. As to who made the entries in the log-book as to the distances of the ships at the time of the collision?

Q. What did he say to you in that regard?

Mr. HUGHES.—We object to that: First, as calling for a hearsay statement, incompetent, immaterial, and not the best evidence.

A. I remember that the entries were made by the first mate, and that generally the first mate made entries in the log-book of the ship according to my experience. I remember the handwriting of the mate, too, be-

(Testimony of J. Geisler.)

cause I often saw his handwriting, and I read the log myself, I don't know how many times. I know that the mate in the original log the passage was written which said that they would not pay out any more chain because they would have to come too near the other ships lying near by.

Mr. HUGHES.—I move that the answer of the witness be stricken out because it is not responsive to the question, and also for the reason that it attempts to give his memory of what appeared in the original log, and not being the best evidence of the contents of the original log, and for the further reason that the log itself would not be competent as it is a self-serving declaration.

A. I refer to the time of the writing up of the log-book; I asked the question of the captain and the mate when I—

Mr. HUGHES.—It is understood now that these volunteer statements are made over my objections. I hate to be making objections all the time, but it is necessary; but shall it be understood that my previous objections shall extend to all of the testimony of the witness that the witness proceeds to give beyond the questions propounded, in the nature of conversations between the witness and the officers of the “Robert Rickmers”? If that is understood?

Mr. ASHTON.—Certainly, that is agreed to.

Q. You may tell what you did yourself regarding this collision between the “Rickmers” and the “Stimson.”

(Testimony of J. Geisler.)

A. I must say in the first place that it is my duty to ask questions of the captain as soon as I see him about things like that to find out how things really were, because in cases like that a special investigation must be conducted by me, in cases like that, for the courts in Germany, which want to determine if it was the fault of the master of the ship, or any officer, or the crew of the ship, and it may be (according to the facts which are brought out by my investigation) depose him, take away his position, and cancel his certificate. It is sometimes the only way to determine because, if the ship is allowed to go away, it may take a year, and the witnesses might depart.

Q. Did you make such an investigation?

Mr. HUGHES.—Objected to as immaterial.

A. I did not in this case. I simply wanted to find out when I asked the captain if I would have to make an investigation for the courts in Germany.

Mr. HUGHES.—I move that that last statement be stricken out as it would be incompetent and immaterial.

Q. You took his statement and that in the log for it?

Mr. HUGHES.—I repeat the same objection.

A. I did.

Q. Did you cause a survey to be made of the "Robert Rickmers" of the damage to the "Rickmers" by the collision?

A. I did.

Q. Did you do that in your capacity as consul or as agent?

(Testimony of J. Geisler.)

A. As agent. As representative for the owners of the ship and for the captain.

Q. To whom did you apply to make that survey?

Mr. HUGHES.—I make the same objection; immaterial, incompetent and irrelevant.

A. To the surveyors here.

Q. What were their names?

A. Captain Hill and his assistant, Captain Walker.

Q. Did they make a survey of the ship, of the "Rickmers"?

A. I remember that they made several surveys.

Q. I hand you this document consisting of nine sheets of paper, and ask you whether or not you can identify that as the report of the surveyors, to which you refer?

(Handing witness paper marked Exhibit No. 9.)

Mr. HUGHES.—I have no doubt that it is. It is the same—

Q. I just want you to say whether that is the report furnished by them?

Mr. HUGHES.—It is, isn't it?

A. Well, it is the report, as near as I can say.

Mr. ASHTON.—That is all.

Mr. HUGHES.—No cross-examination.

Mr. ASHTON.—Oh, yes, I do want to ask him another question.

Q. Were there any interlineations in the log-book?

(Testimony of J. Geisler.)

A. I have not seen any at any time.

Q. Do you remember about that?

A. I remember that too. I asked the captain and the mate several times about these things.

Mr. HUGHES.—I object to his hearsay statements.

Q. Were there any interlineations in the ship's log?

Mr. HUGHES.—I object to all of this evidence.

A. I can't remember that there were any interlineations.

Mr. ASHTON.—That is all.

Mr. HUGHES.—That is all.

P. G. HILL, a witness for and on behalf of respondent, being first duly sworn by the Commissioner, testified as follows, to wit:

Direct Examination.

(By Mr. ASHTON.)

Mr. HUGHES.—Now, in so far as the testimony of this witness and Mr. Walker will relate to the "Rickmers" damage, I desire by consent that it may all be taken down by the reporter subject to my objection because it is immaterial. If that is agreed? Then I will not renew my objections.

Mr. ASHTON.—I will agree to that. Can we agree that this is their report?

(Testimony of P. G. Hill.)

Mr. HUGHES.—Yes, I have no doubt but what we can.

Q. Mr. Hill, I hand you paper marked Claimant's Exhibit No. 8, and ask if you can identify that document consisting of nine sheets of paper; ask you whether or not that is your signature to it, and if so, state if it is?

A. Yes, sir, these are all my signatures.

Q. Do you know the signature of Mr. Walker there attached? A. Yes, sir.

Q. He is your assistant, or cosurveyor, is he?

A. Yes, sir; he is the cosurveyor or assistant.

Q. Do you know that to be his signature?

A. Yes, sir.

Q. Is that the report which you made after the collision upon the "Rickmers" and the "Stimson"?

A. Yes, sir; that is the report which was made by the both of us.

Q. Which you delivered to the German consul?

A. Yes, sir; which we delivered to the German consul.

Q. As agent for the owners?

A. Yes, sir; as agent for the owners.

Mr. ASHTON.—We will reoffer it in evidence if there is any question about it.

Mr. HUGHES.—I do not raise any question about the fact that it was made by Mr. Hill and Mr. Walker, and it is their signatures and their report; but I object to

(Testimony of P. G. Hill.)

the whole of it as immaterial to the issues in the case; and so far as it purports to describe the injuries to the "Rickmers," I object to it as incompetent and immaterial under the issues in this case.

Q. I notice that this report also covers the damages to the "Stimson," which you place at \$5,000?

A. Yes, sir.

Mr. HUGHES.—Now, I will also object to the report in so far as it purports to give a description of the injuries to and damages sustained by the "Stimson."

Q. Do you regard that as a fair and reasonable estimate of the damages to the "Stimson" which she suffered from the "Robert Rickmers" colliding with her?

Mr. HUGHES.—I object to that as leading.

A. Yes, sir; we made an examination of the "Stimson" at the request of the German consul and the master to appraise the damage sustained by her through colliding with the "Robert Rickmers"; and at the time we went over it carefully and estimated that in competitive bids that it should not exceed five thousand dollars.

Mr. HUGHES.—To make the repairs?

A. Yes, sir; to make the repairs to the "Stimson."

Q. Do you know whether there were competitive bids in making the repairs to that boat?

A. I don't. Of course, we gave an estimate or our opinion of what she should have cost.

(Testimony of P. G. Hill.)

Q. Captain Hill, how did you find the cables of the "Robert Rickmers," that is, what was left of them, as to being up to Lloyd's requirements?

A. They were Lloyd's test cables, the best make of cable which have been classed in Lloyd's some time previous.

Q. What would you say as to whether her entire ground tackle including cables, was sufficient as required for such class of vessels in the sea-faring world, if you know?

A. My opinion was that they were in good condition.

Q. Were they up to the standard required on that class of vessels?

A. They were up to the standard required on that class of vessels; yes, sir.

Q. Was that also the case with the compressors?

A. That was also the case with both compressors.

Q. How was the windlass?

A. The windlass was up to standard previous to the accident.

Q. Now, when you first went aboard the "Rickmers," how long was it after the collision, if you remember?

A. Oh, well, probably a day or two. I couldn't exactly say how long.

Q. Do you remember seeing the compressor block which had broken before the collision?

A. Yes, sir; I remember seeing the broken block.

(Testimony of P. G. Hill.)

Q. Did you examine it? A. Yes, sir.

Q. Did Mr. Walker examine it? Was he with you?

A. Yes, sir.

Q. Did you both examine it?

A. We examined it together.

Q. To what extent did you examine it, and to what purpose?

A. We examined it for the purpose of finding out to what extent it was damaged, and whether it was necessary to replace or repair it, or renew it in place of replacing it.

Q. Was it broken in many parts?

A. The block was split and the compressor itself was broken.

Q. Did you make an examination of the compressor itself and the compressor block?

A. Examined them well.

Q. Did you look at them very carefully?

A. Yes, sir.

Q. With a view of what?

A. With a view of replacing it. And our report goes to the underwriters, by which they pay; and they very often ask our reason—opinion as to breaks with a view of answering any questions which come up afterwards.

Q. Did the causes of the break enter into your mind to any extent in making that examination?

A. They did.

(Testimony of P. G. Hill.)

Q. To what extent?

A. Well, the extent it entered into my mind was that the block previous to the accident, the compressor and the foundation, were in good condition previous to the accident.

Q. How did you know that? A. By the break.

Q. What did the break look like?

A. It looked like a fresh break.

Q. That is, in the block?

A. Yes, sir, and also in the casting. Of course, the compressor is made of cast iron, and a foundation to set on, a block.

Q. Referring to the casting, was there any evidence on the surface of that casting indicating weakness, or going to show the cause of its giving way?

A. None that I could see.

Q. Were there any such evidences upon the surface of the compressor block?

A. None that I could see, and I examined it carefully.

Q. And Mr. Walker also?

A. And Mr. Walker also. We examined it together. Of course it was a joint survey between Mr. Walker and myself.

Q. Did you notice any evidence in the interior of the casting or upon the face of the break on either side giving evidence of the cause of the break?

A. No, sir. The whole thing seemed to be a clean break.

(Testimony of P. G. Hill.)

Q. Did you upon the block?

A. On the block, also, it was a clean break, as far as I could see.

Q. You could see no evidence, either on the exterior or the interior?

A. No, sir.

Q. What kind of material was the block made of?

A. Hard wood.

Q. What kind of wood?

A. To the best of my knowledge it was green-heart.

Q. How does that wood compare with other woods for compressor blocks?

A. It is supposed to be one of the toughest as well as the hardest of woods.

Q. How many years of experience have you had as to being familiar with the equipment of sailing vessels of this kind?

A. Well, I have been in the business since I was sixteen years old.

Q. And how old are you now?

A. Thirty-eight. I served my apprenticeship.

Q. What experience have you had in surveying ships; Lloyd's or otherwise?

Q. I am Lloyd's surveyor—been Lloyd's surveyor for three years. I was surveyor for Dudley & Company.

Q. How many years?

A. I was for Dudley & Company nine months; just previous to being where I am.

Q. Now, from your knowledge, skill and experience,

(Testimony of P. G. Hill.)

as a shipping man, and as a surveyor, did you form any conclusion as to the cause of this compressor or the compressor block breaking?

A. Undue strain broke it.

Mr. HUGHES.—He should answer that by yes or no.

A. Yes, sir.

Q. What conclusion did you come to as to the cause thereof?

Mr. HUGHES.—I object to that as incompetent and calls for evidence not competent in the case, and not being the subject of expert testimony.

A. My opinion was it was an undue strain which caused the breaking of the compressor block, and also after reading—not reading the log, but after hearing the captain's statements to me, which, of course, it is his place to give to me at the time of the survey so as to find out the cause of the damage—

Mr. HUGHES.—We renew our objection, and move to strike out the testimony because it appears it is also based in part upon hearsay evidence, and the unsworn statements of the captain.

Q. What do you mean by undue strain?

A. Well, a strain, that is, it is not made for to stand; an undue strain that got on it through an accident.

Q. Did you form any idea as to whether or not the elements in the way of a storm, or otherwise, entered into that undue strain?

(testimony of P. G. Hill.)

Mr. HUGHES.—We renew our former objection.

A. That was the cause of the undue strain, the elements.

Q. Now, do you know what became of this compressor block? Do you recollect what became of it? When you went on board this vessel the first time, did you see some of the compressor block?

A. Well, they were repairing it. I saw pieces of it.

Q. What pieces?

A. Just the broken parts. They had to remove the broken parts of it to install the new.

Q. Do you know what became of the block while they were replacing it?

A. Well, at the final survey of the case, I saw them sweeping up parts of it, as if they were throwing overboard the parts of the block and the general debris remaining after being overhauled and repaired.

Q. To what extent were the parts of the block swept up with the general debris?

A. Well, the pieces of the block they threw away were quite a good size; and they just threw them over the side, as far as I saw. Of course, they were no further use to them. They were already destroyed for any use.

Q. Do you remember of seeing a hook which entered into this breaking or carrying away of the cables at the time the "Rickmers" went adrift?

A. The chief officer showed us the hook belonging

(Testimony of P. G. Hill.)

to the luff-tackle, which had been put on after the compressor had gone. It was stretched out. The hook was straight—destroyed by the strain which had been put on it.

Q. From your knowledge and experience, what have you to say as to the strain which was necessary to straighten out that hook?

A. The strain would be considerable.

Q. What do you mean by considerable? Do you mean any strain which would—

A. (Interrupting.) Any strain more than the hook was made to stand.

Q. Do you think it would be possible for any ship tackle to stand the strain which straightened out that hook? A. Any tackle that size.

Q. What tackle was that?

A. It was in the way of a luff-tackle, they call it at sea. It is like a relieving tackle. There was a moor chain which was lashed around the cable before the windlass, after the compressor carried away, to relieve the windlass. After the compressor carried away, the windlass was taking the strain—the block was taking the strain after the compressor was gone; and to relieve the windlass they put on this tackle and carried it back to bits abaft. After the compressor carried away, the block of the windlass broke, and the windlass was taking the strain; and to relieve the windlass they put on these luff-tackles ahead of the windlass and took

(Testimony of P. G. Hill.)

them to bits abaft the windlass, for the purpose of relieving the strain on the windlass. Well, then, the luff-tackles, or the hook on the tackle carried away, or let go, or straightened out, and then the strain come on the windlass again, and then—that is what broke the windlass—broke the block of the windlass on the port side of the windlass—the windlass was damaged.

Q. Now, what have you to say as to whether or not the effect upon that hook, its being straightened out, would result from any ordinary strain on the anchor cables of a ship?

A. No ordinary strain, it would not.

Q. Was there any other, if you know—was there any other larger or better chain and hook on board the “Rickmers,” which could have been used for the purpose of shackling their cable after the compressor block carried away?

A. None that I saw.

Q. Did you see all the equipment on board her, and particularly all chains in her chain lockers?

A. Yes, sir; I saw the majority of her equipment; everything, as far as it was necessary.

Q. Did you observe any larger or better chain which could have been used for the purpose of shackling her cable in the way which you have stated?

A. I cannot call to my recollection that I did.

Q. When you refer to this compressor block as having been swept up, and the broken parts put with the debris, and parts of it as you believe thrown overboard, do you know whether or not that sweeping up

(Testimony of P. G. Hill.)

and casting overboard of it occurred—if the casting overboard occurred or happened before or after the captain and officers of the “Robert Rickmers” gave their testimony in this case?

A. I could not say as to that. I just happened to see it casually.

Q. That is all.

Cross-examination.

(By Mr. HUGHES.)

Q. Did you ever see the port anchor of the “Robert Rickmers”?

A. No, sir.

Q. Did you ever examine the port chain of the “Rickmers”?

A. I did what was left; yes, sir.

Q. Did you examine the link that broke?

A. The link that was broke I did not see.

Q. What was the dimensions of this hook that was used to shackle the chain after the block broke?

A. Well, it would be about—I should say it would be about an inch.

Q. About an inch in diameter?

A. Yes, sir; as near as I can recollect. Of course, it is two years ago since this happened. It might have been an inch, or up to an inch. I could not be sure. I remember it was a big block.

Q. Would there be no other way of shackling the chain after the compressor block broke so as to relieve the windlass except by the use of such a luff-tackle?

A. Relieving tackle they sometimes call it.

(Testimony of P. G. Hill.)

Q. Without the use of hook and tackle?

A. None that I know of. That is the general way, the general way of doing it. That is the way they did; they just went through the ordinary way.

Q. Couldn't the chain have been shackled so as to have been secure, as to the chain itself, that is, by other chains, taken the strain off the windlass, and given the same power to the shackle which existed in the cable itself?

A. Well, when you give it thought, if they had the time and wasn't in the predicament they were at the time, they could have made all kinds of shifts probably; but in the predicament they were at the time, I think myself that they couldn't have done better than what they did.

Q. That was not what I asked you. You were not there at the time?

A. No, sir; but I had a statement of what was done.

Q. Let us eliminate that, and we won't say anything about what occurred up there that afternoon. What I am asking you is *independently* entirely of that. What other way would there be of shackling this chain so as to take the strain off the windlass after the breaking of the compressor block?

A. In my opinion, there is no other proper way.

Q. Couldn't they have relieved it by another spare anchor chain so as to have the entire strain taken off the block in the same way?

A. No; they couldn't have done that at that time.

(Testimony of P. G. Hill.)

Q. And give the same strength? A. No, sir.

Q. Well, how long would it take by other ways?

A. No longer than that, but it wouldn't have been good seamanship to have done it any other way.

Q. Well, if that hook wasn't as strong as the cable then they could have shackled a spare cable to this cable and then made it fast in just the way they made this luff-cable fast? A. No, sir.

Q. Why not?

A. Because they hadn't got the time. They couldn't do it that way.

Q. You have admitted, Captain, that there was other ways of shackling that cable besides the way you have mentioned?

A. There are other ways, yes, sir, of doing it. They might have taken the cable off the windlass; of course, that is what they might have done, and taken it off and fastened it onto the stern of the ship, if they had had time.

Q. What did they make this fast to?

A. To bitts.

Q. Was there any other way to fasten it——?

Q. Couldn't they have used other chains?

A. (Interrupting.) None better than what they did.

Q. (Continuing.) Except by using luff-tackle?

A. None better.

They could have fastened it around the mast, or the stern

A. As I say, they could have done many other things.

(Testimony of P. G. Hill.)

of the ship, or to the deckhouse on the ship. They could have done all those if they had had time.

Q. They had a spare anchor chain of the same dimensions this chain was?

A. No, sir; no anchor cable.

Q. They had another anchor in chain?

A. Most decidedly.

Q. Couldn't they have used the other chain and made it fast ahead of the compressor block?

A. They were already using that.

Q. They weren't using the spare chain?

A. Yes, sir.

Q. Where were they using that?

A. From the ship; the starboard anchor was down.

Q. Didn't they have a spare one?

A. No. There is a cable for the starboard anchor, and one for the port anchor also.

Q. Then didn't they have additional anchor chains aboard the ship?

A. There was an additional anchor aboard the ship.

Q. And they had an additional chain on board?

A. Which was in use, yes, sir.

Q. I don't mean the starboard anchor chain?

A. There are only two cables for the ship.

Q. Didn't they have an extra cable?

A. There are only two cables for a ship, one is on the starboard anchor and another on the port anchor.

Q. Did they have no hawsers on board ship as strong as the cable, by which they could have relieved it?

(Testimony of P. G. Hill.)

A. No; they hadn't a hawser as strong as the cable.

Q. Didn't they have hawsers strong enough for that?

A. They hadn't a hawser which could be used for that purpose.

Q. After the breaking of the hook didn't they use the hawser?

A. I can't call to recollection that they used a hawser.

Q. Didn't they use a hawser and that hawser did not part, but the cable broke and lost the anchor.

A. My opinion is at the present time that they used another block or hook.

Q. They might have used a hawser?

A. I don't believe they did.

Q. But you say it would be possible?

A. It would be entirely possible. Not at all practicable.

Q. When was it you made the examination of the "Stimson"? A. In Seattle harbor.

Q. When? A. Well, I can't call the date.

Q. When with reference to the other? Was it made on the date given? Was it January 4, 1901?

A. It was made on the date given there.

Q. It was made about that time?

A. Yes, sir; we made an examination of both vessels, the "Rickmers" and the "Stimson."

Q. On the same trip?

A. No. It may have been the next day.

Q. How long were you engaged in making the examination of the "Stimson"?

(Testimony of P. G. Hill.)

A. About two or three hours.

Q. The estimate that you made of \$5,000, the amount appraised, was the sum which in your opinion would be the actual cost of the repairs which would be required on account of the damage? A. Yes, sir.

Q. Provided these repairs were made by calling for competitive bids; that is, by securing them to be made at the lowest possible expense.

A. By competition, which is the best way to get the lowest bids, the best terms—is competition.

Q. Did you figure that way?

A. As a rule, we reckon that way. Of course, I am in that business all the time.

Q. Did you figure it in that same way when you made your survey of the "Rickmers"?

A. That I did.

Q. Why did you not make a specific report of the injuries and damage to the "Stimson," the same as you did for the "Rickmers"?

A. For the reason that they sent us to make a survey and appraise the damage, which was the request made of us; and of course, you cannot do any more than what you are asked to do, or else they will tell you to mind your own business, which I always try to prevent people from doing.

Redirect Examination.

(By Mr. ASHTON.)

Q. Is it at all customary for vessels to carry extra cables for their bow or spare anchors?

(Testimony of P. G. Hill.)

A. Extra cable? A vessel the size of that, she would have 270 fathoms of cable; 135 fathoms for the port anchor, and 135 fathoms for the starboard anchor.

Q. And the entire cable on board the ship would be shackled onto the anchors?

A. To either the starboard of the port bow anchor.

Q. And extra cable would not ordinarily be on board of the ship for her spare or bow anchors, if she had any?

A. No, sir.

F. WALKER, a witness for and on behalf of respondent, being first duly sworn by the Commissioner, testified as follows, to wit:

Direct Examination.

(By Mr. ASHTON.)

Q. Are you the gentleman, the surveyor, who surveyed the "Robert Rickmers" with Captain Hill?

A. I am; yes, sir.

Q. What is your official capacity? Official business?

A. I am a marine surveyor.

Q. And you are also surveyor for Lloyd's agents, aren't you? At times? A. Yes, sir.

Q. Now, you were requested, along with Captain Hill, to make a survey of the "Robert Rickmers" and also of the "Stimson," after this collision?

A. Yes, sir; I was.

Q. Did you make a survey of the "Stimson"?

A. I did, with Captain Hill.

(Testimony of F. Walker.)

Q. And the result of that is shown in this report marked No. 8?

A. Yes, sir; that is the estimate made by us.

Q. And does that also show your survey of the "Robert Rickmers"?

A. This document; yes, sir.

Q. And the nature of her damage?

A. Yes, sir.

Q. Were you able to tell from your examination whether or not that damage resulted from a collision with another object or another vessel?

A. Yes, sir.

Q. Do you know whether it did, or not?

A. I was able to tell she had collided with something by the rigging and the manner it was torn away.

Q. What do you say as to whether this is a correct and fair estimate of the damage to those ships?

A. In my opinion, it is a correct and fair estimate of the damage to all of the vessels named in this report.

Q. Do you know whether or not the damage to the "Rickmers" was repaired?

Mr. HUGHES.—It is agreed, is it, that all of this testimony is going in subject to the same objections which I made to the testimony of Captain Hill?

Mr. ASHTON.—Certainly; that is agreed.

Q. Was the damage to the "Robert Rickmers" repaired under your supervision, and that of your co-surveyor, Mr. Hill?

A. Yes, sir.

Q. All of the damage referred to in that report?

A. Yes, sir.

(Testimony of F. Walker.)

Q. State whether or not that damage was all repaired before the "Robert Rickmers" departed from the Sound?

A. Yes, sir.

Q. Did you again survey the vessel and pass her as seaworthy before she departed from the Sound?

A. Yes, sir.

Q. Now, in making these various surveys of the "Robert Rickmers" after that collision, did you make any particular examination of her cables and her entire ground tackle?

A. We made a very careful examination of the ground tackle of the vessel that was left.

Q. Including the cables?

A. Yes, sir; the ground tackle, cable, and anchors.

Q. Including the cable and compressor?

A. Yes, sir.

Q. That is, all that was left of it? A. Yes, sir.

Q. What condition did you find them in?

A. The anchors and cables were good.

Q. What would you say as to whether they came up to Lloyd's requirements in size and quality of material?

A. They came up to them; coincided with Lloyd's requirements.

Q. And with the Bureau of Underwriters' rules?

A. I am not acquainted with those rules; but I think that Lloyd's are in excess of them.

No. 1149

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

APOSTLES

ON APPEAL.

C. SCHWARTING, Master and Claimant
of the German Bark "Robert Rickmers,"
her Tackle, Apparel and Furniture,

Appellant,

vs.

THE STIMSON MILL COMPANY
(A CORPORATION,)

Appellee.

FILED
DEC 24 1904

VOL. II.

(Pages 289 to 593, Inclusive.)

Upon Appeal from the United States District
Court for the District of Washington,
Western Division.



(Testimony of F. Walker.)

Q. In excess?

A. Yes, sir; in regard to dimensions, and the excess required on ground tackle.

Q. Are Lloyd's requirements or rules in regard to tensile strength or testing strengths of any kind less than any of these other shipping bureaus or organizations?

A. No, sir. Lloyd's is acknowledged as the highest class throughout the world.

Q. Now, what condition did you find them in?

A. The anchors and cables, the remaining anchors and cables were in first-class condition.

Q. What condition did you find the compressors?

A. The starboard compressor was all right, and the port compressor was slit in two and broken.

Q. To what extent if at all did you examine the port compressor to ascertain the cause of the break?

A. We made a careful examination of the port compressor to determine whether it could be repaired or not, and also what was the cause of its breaking or damage, and whether it would be necessary to renew it.

Q. Were you able to determine the cause?

A. Yes, sir.

Mr. HUGHES.—Now, it is agreed, is it, that the objections I made to Mr. Hill's testimony are considered as being made here to like questions asked of this witness?

(Testimony of F. Walker.)

MR. ASHTON.—Yes, that is the agreement. We will agree to that.

Q. Could you discover the cause from any outward or inward appearance of the compressor or the compressor block?

A. The compressor and the compressor block had been forced apart by the cable being drawn through the same.

Q. Just explain that, if you think you know, whether from an investigation that you made or from an examination of these broken parts, what the cause was? Just tell us in your own way?

A. From the examination made at the time, I could see that the cable which fits into the compressor—the compressor is a cast-iron block, with a raising and lowering tongue, and this sets on a wooden block with holding bolts going right through the deck and beams—the cable had been lying in this compressor, which exactly fits the links, and if any undue or excessive strain comes on it, it would haul the cable forward and spread the block apart, and that was the way in which the block was split: the cable was hauled forward—the vessel coming back hauled the cable forward, and forced the block apart.

Q. Would any ordinary strain upon the anchor or any usual ordinary strain on ships at anchor have that effect?

A. No, sir; certainly not; as the compressor is made

(Testimony of F. Walker.)

to hold the vessel. The idea of the compressor is, after the vessel is once moored, to take the strain off the windlass after it has lowered the anchor, and then it is all thrown on the compressor, which is made in such a way that the cable cannot slip through it.

Q. If no ordinary strain could have had that effect, how do you account for it?

A. It was an extraordinary strain, due to the elements—an excessive gale of wind at the time, and the anchor holding fast.

Q. Have you any idea as to the force or velocity of a wind which would produce such an effect as that?

A. Why, I don't know what the force or velocity of the wind at the time was.

Mr. HUGHES.—That is not the question. I object to it. The question calls for his opinion, and I object to it on that ground.

Q. Do you think anything less than a maximum storm or hurricane could produce the effects you saw?

Mr. HUGHES.—We object to that as leading.

A. It would require a very severe gale to do such a thing, or a very swift tide.

Q. To what extent are you familiar with vessels of a similar class to the "Robert Rickmers," and with their compressors their ground tackle and equipment.

A. To what extent I am familiar with them?

Q. Yes, sir.

(Testimony of F. Walker.)

A. My whole business has been with them practically all my life.

Q. Well, now, how did this ground tackle on the "Rickmers," and particularly her compressors, and particularly her compressor block—everything—compare with similar tackle on other ships?

A. Very favorably.

Q. Do you know of any way that the compressor and compressor block could have been made safer? Could it have been constructed in any safer manner?

A. No; it was constructed on normal lines. The design is considered as good as can be made; and all vessels are practically constructed on the same line, as far as the compressor is concerned. That is the type of compressor adopted by various shipbuilders throughout the world.

Q. Now, about how many times were you on board the "Rickmers," say after the collision and before you made this report under which she was repaired?

A. Previous to making the first report?

Q. Yes, sir.

A. Why, that first report was made after the first time we went on board of the vessel. We went on board for the purpose of determining the extent of the damage, and making a report on the same.

Q. How many times were you on board the vessels before you made the reports in evidence?

(Testimony of F. Walker.)

A. The reports in evidence are of various dates. The first report was made on December 30th, it was the time we made the report—

Q. (Interrupting.) Do you know what became of the compressor block which broke?

A. (Continuing.) That would be regarded the final report. No, I cannot say what became of the old compressor block. The fragments were around where the men were at work.

Q. What was done with the fragments?

A. They threw them to one side, and the crew disposed of them or perhaps these men disposed of them. They were absolutely valueless as far as intrinsic value was concerned.

Cross-examination.

(By Mr. HUGHES.)

Q. The purpose of the compressor is to take the strain entirely off the windlass?

A. Yes, sir; after the vessel is brought up.

Q. After the vessel is riding at anchor?

A. Yes, sir. The anchor is let go and the windlass is gradually brought up until they have got the required length, and then it is put in the compressor and jammed.

Q. How is it jammed?

A. It is jammed by a hook which passes over the top of the cable.

Q. A hook?

(Testimony of F. Walker.)

A. There is a large iron hook over the compressor, and when the lever is thrown open, the tongue goes down, and the cable goes into its bed, and then the hook is put across the top to hold it there. The formation of the compressor is such that the cable cannot slip out; it is kind of wedged shaped, you understand, and after the link is put in there, the link of the cable is oval, and the hole in the compressor is oval, and there is a slot at each end where the vertical link lies in; two vertical and one horizontal; and the hook goes on top of the horizontal link.

Q. How is it held down firmly so it can't lift any?

A. There is a large hook, as I explained before, goes over this, and in this is a slot which the big hook goes through and passes over the top of the link, and that can't possibly get out. It takes very little to keep it down; the thing is to hold it and keep it from sliding forward; and the formation of the compressor fits the link so it can't pull through. It is a cast-iron block.

Q. You say you think that the parting of the compressor block must have been due to some undue strain?

A. Certainly.

Q. That would necessarily in your opinion be or at least more likely to be a sudden strain or jerk powerful enough to accomplish it, or would it be more likely to occur by a long steady strain?

A. Well, the strain, when the anchor is first let go,

(Testimony of F. Walker.)

the vessel is brought up gradually; there would be no jerk experienced.

Q. I mean coming from the force of wind, storm or tide?

A. By the direct force of wind, a vessel will surge at her cable; she will surge at her cable.

Q. Then you think by the surging and jerking it would be more likely to part it? Or would it be more likely by pulling steadily?

A. It would be the combined efforts of the bringing up and the surging and the wind combined.

Q. When a vessel reached the end of her cable from the force of the wind, then it will jump again and slack her cable?

A. She would not jump any ways quickly through the water, a big vessel like that. If you watch a vessel out here surging, you will see the cable rises up and down.

Q. The more suddenly it bring up on it, the more likely it would be to part the compressor?

A. That is a fact.

Q. Now, you think there must have been a very violent storm to part a compressor which would be in good condition? A. Yes, sir.

Q. And from your inspection, what would you say, on Buford's scale, would be the force of the storm?

A. I could not say the force of a storm which would have that effect; because all vessels, all parts of ves-

(Testimony of F. Walker.)

sels are constructed on what is known as a factor of safety, which is usually four times what is necessary.

Q. Now, here is a case in which the compressor block was broken. Now, assuming that that compressor block was in first-class condition immediately preceding the breaking, and you have already stated that it would have to be a very violent storm; I want your idea of the violence of the storm, expressed as near as you can, according to Buford's scale? You understand it—what that is? A. I understand what you are getting at.

Q. That is, give me some idea of what character of a storm you have in mind as constituting a sufficiently powerful storm to accomplish such a result? Do you think it would be less than eleven on the Buford scale?

A. Well, I would rather not make any statement regarding that simply because I cannot tell exactly what pressure was brought to bear against it.

Q. I know that; but you have already stated that it would have to be a very violent storm?

A. I said it would take a severe strain. A violent storm or a sudden gust of wind would do it.

Q. But a sudden gust, unless it was a strong gust wouldn't do it? And now, the strength of that gust is measured in terms that are clear to navigators by the Buford scale, isn't it? A. Yes, sir.

Q. You understand what the Buford scale is?

A. Yes, sir; I am perfectly familiar with it.

Q. Now, what in your opinion would be the strength

(Testimony of F. Walker.)

or power of a gust of wind or a gale as the case may be, measured by the Buford scale necessary to part this compressor, if in proper condition?

A. Well, I don't care to give my opinion on that.

Q. This compressor was built with a view of holding a cable when the ship is at anchor in all kinds of weather?

A. Yes, sir; but there is such a great deal to be taken into consideration that I don't care to give an opinion on it.

Q. I say, these compressors are constructed with a view of holding the cable—

A. (Interrupting.) Through almost anything.

Q. (Continuing.) While a ship is at anchor, and in all kinds of weather?

A. They are constructed to hold that vessel where any vessel can be held.

Q. The contemplation of the builders in constructing the compressor was that she may ride at anchor in any kind of a gale?

A. Yes, sir; in any kind of a gale; but there was a tide to be considered in the place this vessel was moored that I don't want to give an opinion. You can turn to the record and find out what the tides was.

Q. What I am trying to get at was to get at your meaning when you spoke of—when you testified that it would be necessarily a violent gale; I want to get some idea, some measure of your idea of the violence of that

(Testimony of F. Walker.)

gale, by having you express it according to the Buford scale, if you can?

A. I don't care to express it that way. The only thing I wish to say is that the cause of the breaking of that compressor was due to a very great strain, more than the compressor was designed to carry.

Q. That is your judgment now?

A. That is my judgment, yes, sir.

Q. The actual expense of repairing the "Rickmers" was in fact far less than you estimated it, wasn't it?

A. I don't remember.

Q. That is all.

On Board the U. S. Cruiser, "New York."

Bremerton, Wash., 11:50 A. M.,

Thursday, Dec. 17, 1903.

Present: Mr. HUGHES, for Libelant.

Mr. ASHTON and Mr. KELLY, for Respondent and Claimant.

Continuation of proceedings pursuant to agreement, as follows, to wit:

Lieutenant POWERS SYMINGTON, a witness for and on behalf of respondent and claimant, having been duly cautioned and sworn, testified:

Q. (Mr. ASHTON.) Please state your name, Lieutenant? A. Powers Symington.

Q. What is your occupation or profession?

A. I am a lieutenant in the United States Navy.

(Testimony of Lieutenant Powers Symington.)

Q. How long have you been a lieutenant in the United States Navy? A. For three years and a half.

Q. What is your present assignment to duty in the navy?

A. I am ordnance officer of the United States ship "New York."

A. Are you a graduate of any naval academy?

A. Yes, sir; the United States naval academy.

Q. At Annapolis? A. Annapolis.

Q. What is your age, Lieutenant?

A. I am 31.

Q. What year did you graduate? A. 1892.

Q. How many years has it been since your graduation? A. Eleven years.

Q. Now have you ever been the navigating officer of any ship since your graduation? A. Yes, sir.

Q. What ships?

A. United States S. S. "Bennington."

Q. Any others?

A. The United States "Fortune" tug.

Q. You have had experience necessarily, I assume, in the anchoring of vessels in open roadsteads?

A. Yes, sir.

Q. And also in harbors?

A. Yes, sir.

Q. And in the navigating of vessels in every respect?

A. Yes, sir.

Q. I call your attention here to United States Coast and Geodetic Survey chart of Shilshoal Bay on Puget

(Testimony of Lieutenant Powers Symington.)

Sound, No. 6439, and ask you to look at it and state whether or not that is recognized in the profession or in the maritime world as an official chart?

A. Yes, sir; it is.

Q. Of the United States Government?

A. Yes, sir.

Q. I wish you would take your dividers and parallel rules and proceed in such a way as you think proper to locate thereon the position of a vessel bearing north twenty-nine degrees east true, and distant one and a quarter miles, nautical, from West Point?

A. I have not a pair of parallel rulers, but I can do it very closely without. (Marking on chart.) That is approximately it as near as I can get it without parallel rulers.

Q. Put "S. S." at the place indicated?

A. Yes. (Witness marks as requested.)

Q. Now, locate, if you please, the position of a vessel north thirty-eight degrees true and distant seven-eighths of a nautical mile from West Point? (Witness does as requested.) Will you please mark that with the letters "C. S."? (Witness marks as requested.) What have you put to show the exact point, a dot?

A. A dot with a circle around it.

Q. Now, please locate the position of a vessel north twenty-three degrees east true and distant three-quarters of a nautical mile from West Point?

A. All right, sir.

(Testimony of Lieutenant Powers Symington.)

Q. Mark that, if you please, "M. S." (Witness marks as requested.)

Mr. ASHTON.—I am having these marked with these letters, Mr. Hughes, the "M." in this case being intended to mean the "Mildred," and the "S," the initial of the witness, and the others accordingly.

Q. Now, if you please, locate another vessel north thirty-three degrees true and three-quarters of a mile distant from West Point. Mark that, if you please, "R. S.," intending to mean "Rickmers" by "Symington."

A. All right, sir.

Q. Now, then, you say that is a regular Government chart, Lieutenant Symington?

A. Yes, sir; a coast survey chart.

Mr. ASHTON.—There is no question about that, is there, Mr. Hughes?

Mr. HUGHES.—Oh, I do not make any question about that being a Government chart.

Mr. ASHTON.—Then we offer the chart in evidence in order that it may be used in connection with these hypothetical questions.

(Chart referred to offered in evidence, marked as Claimant's Exhibit No. 10, for identification, and returned and filed herewith.)

Q. Now, Lieutenant Symington, assume that the German bark "Robert Rickmers," twenty-two hundred tons, leaves her anchorage at Port Townsend on the morning

(Testimony of Lieutenant Powers Symington.)

of December 25, 1901, and proceeds under tow of the tug "Tacoma," on her way up Sound to Tacoma; the weather is clear and the wind is light from the south'ard. After noon the wind increases and the towboat captain signals that he is about to take the "Rickmers" to a temporary anchorage in Shilshoal Bay. The ship is taken to leeward of West Point to an anchorage which bears from West Point light north thirty-three degrees east true, and distant three-quarters of a nautical mile. It is extremely high tide at Shilshoal Bay at 2:48 P. M., and extremely low tide at 10:41 P. M., on the day in question. The "Rickmers" ground tackle is as follows: her starboard anchor, weighs with stock, 5124 pounds; her port anchor weighs, with stock, 4,850 pounds, and each of her anchor chains are of the following dimensions: each are stud link chains of total length of 135 fathoms, weight of sixty-three hundred weight; length of link twelve and three-quarters inches; breadth of link seven and three-sixteenths; size or diameter of link two and one-sixteenth; breaking strain in each length of sixteen fathoms, one hundred and seven and one-tenth tons; tensile strength seventy-six and five-tenths tons; her anchors and chains are certified by Lloyds, and she is equipped with the usual appliances in the way of capstan, compressors, etc. Lying in the bay at the time are three schooners, located as follows: the "Corona," a three-masted topsail schooner of 394 tons, was at an anchorage which bore from West Point light north thirty-eight degrees east true and distant

(Testimony of Lieutenant Powers Symington.)

seven-eighths of a mile, nautical; the "Mildred," a three-masted topsail schooner of 411 tons, was at an anchorage which bore from West Point light north twenty-three degrees east true and distant three-quarters of a mile, nautical; the "Stimson," a four-masted topsail schooner was at an anchorage which bore from West Point light north twenty-nine degrees east true and distant one and one-quarter miles nautical; the "Stimson" is a schooner of 701 tons. The "Rickmers" was brought to her anchorage about four o'clock P. M., in fourteen fathoms of water, amidships, dropped her port anchor and paid out forty-five fathoms of chain. It is the custom of Puget Sound ports that the towboat captains in docking vessels in tow up and down Sound assumes all the duties of pilot. The captain of the towboat in this case was a licensed pilot and indicated the anchorage to the captain of the "Rickmers," who was a stranger to the waters, this being his first voyage to Puget Sound; under those conditions and circumstances did the "Rickmers" display good seamanship and judgment in anchoring in the place and manner indicated?

Mr. HUGHES.—I object to the question as not a proper hypothetical question, not based upon facts correctly stated from the evidence taken in the case and for the further reason that it is not the proper subject for hypothetical questions.

A. It was perfectly proper and seamanlike procedure

(Testimony of Lieutenant Powers Symington.)

to anchor at that place and at that time as specified in the question.

Q. You mean perfectly right and seamanlike on the part of whom?

A. On the part of the captain of the ship.

Q. Of the "Rickmers"?

A. The captain of the "Rickmers."

Q. Please give your reasons fully for that answer, Lieutenant?

Mr. HUGHES.—Same objection.

A. The chart shows that that is good anchorage to be used at any time and the captain had a perfect right to anchor there unless there were some local reasons why he should not do so, and if he anchored there on the advice of the Sound pilot, the supposition would be that there were no local objections to anchoring there apart from what would appear on the chart, and the chart shows that would be a good place to anchor.

Q. Now, Lieutenant, assume all the conditions of the first question which was propounded to you, and in addition thereto the following: The "Rickmers" in coming to her anchorage, split the foundation block—wooden—of her port compressor and ten or fifteen fathoms of her port chain runs away. The tugboat which is standing by passes a hawser and hauls her back to her former anchorage, or perhaps to one a little more in shore. The "Rickmers" while this is being done overhauls the slack of her port chain and lies to her port anchor, having forty

(Testimony of Lieutenant Powers Symington.)

fathoms of port chain out and having rigged a relieving tackle thereon by using two full blocks, each having a two inch in diameter hook with a rope rove through them, and stoppered on to the chain and foremast. Her starboard anchor is dropped also, and thirty fathoms of her starboard chain is paid out; under these conditions and circumstances were those precautions sufficient and seamanlike and was the relieving tackle described sufficient and seamanlike?

Mr. HUGHES.—Same objection as before.

A. They were.

Q. Please give your reasons for your answer.

Mr. HUGHES.—Same objection.

A. Under conditions of a light breeze blowing the dropping of two anchors and paying out of thirty and forty-five fathoms of chain on those two anchors would be ample to hold any ship that is well founded in ground tackle.

Q. Lieutenant, you are one of the watch officers now, of this battleship "New York," are you not?

A. No, sir. I am the ordnance officer instead of watch.

Q. You have served a watch officer.

A. Yes, sir; on board the ship for two years.

Q. On board this ship? A. Yes, but not now.

Q. This is the battleship "New York" where we are taking this testimony, is it?

A. The cruiser "New York," not battleship, yes, sir.

(Testimony of Lieutenant Powers Symington.)

Q. Now, Lieutenant, assuming the conditions of the first and second questions, was it good seamanship under the circumstances of wind, weather and anchorage for the "Rickmers" to lie in this temporary berth with two anchors out, having thirty fathoms of chain to starboard and forty fathoms of chain on her port anchor, stoppered as described?

Mr. HUGHES.—Same objection.

A. I have given that in the previous question; it was good seamanship under the conditions that were described in the first questions.

Q. Lieutenant, assume the conditions of the first, second and third questions and in addition thereto, the following: Five hours have elapsed and it is about ten o'clock P. M.; the wind is from south southwest veering a point or two each way and is blowing in gusts up to ten and eleven on the Beaufort scale. The hook on one of the blocks of the relieving tackle is carried away and the ship begins to drag. The starboard chain is payed out as rapidly as possible, but the anchor does not hold and another and similar relieving tackle is rigged to the port chain, when it is discovered that the chain has parted and the anchor is lost. The "Rickmers" passed off to leeward, gets athwart the hawser of the "Mildred," carrying away the "Mildred's" jib-boom, gets clear and passed to leeward of the "Mildred's" port side until she fouls the "Stimson's" starboard bow; under the conditions of

(Testimony of Lieutenant Powers Symington.)

wind and weather do those facts show any want of care and seamanship on the part of the "Rickmers"?

Mr. HUGHES.—Same objection as before.

A. No, I do not think so. I do not think they do.

Q. Please give your reasons fully for that answer.

Mr. HUGHES.—Same objection.

A. The reason being that having anchored in a good place, if the wind came up—freshened—and effort was made to pay out more chain, it was not bad seamanship if the anchor carried away—if the anchor chain would carry way; the further condition there, as I understand it was that the anchor had carried away—that the port anchor chain had carried away, that they tried the chain on the port side and they found the anchor had been carried away?

Q. That is right?

A. The wind rose and an effort was made to further secure the ship, make it more safe, and it was found that an accident had happened, and in my opinion the proper precautions were taken there.

Q. Mr. Symington, assume all the conditions of the first, second, third and fourth questions, and in addition thereto, the follows: The night is clear and without fog, but the sky is overcast and there is occasional rain; all the vessels are properly equipped with lights, etc., the "Rickmers" drags her anchors not later than eleven o'clock P. M., gets into collision with the "Mildred" as described, comes down on to the "Stimson"; from the time

(Testimony of Lieutenant Powers Symington.)

the "Rickmers" first began to drag until she came into collision with the "Stimson," not less than a half hour elapses. The "Stimson" was lying at one anchor on 105 fathoms of cable; under those circumstances of wind and weather and anchorage was it within the power of the "Stimson" to take steps to avert the collision?

Mr. HUGHES.—Same objection.

A. It is always possible to take some steps, you can't say they would have been successful steps, but more chain might have been—sail might have been made on one end or the other of the ship to sheer one side or the other. I do not know that it would have had the desired result, but some effort might have been made, I think should have been.

Q. Supposing she had hoisted her staysail?

Mr. HUGHES.—Same objection.

A. I say hoisting the sail one end of the other would sheer the vessel to one side—one way or the other. Hoist a staysail or a spanker, or if there was any tide you might have put her helm over and sheered her that way.

Q. Assuming the tide was flooding and had been flooding for a couple of hours, what have you to say?

Mr. HUGHES.—Same objection as before.

A. I am not familiar enough with the currents there to answer that question—not acquainted enough with the tidal current.

(Testimony of Lieutenant Powers Symington.)

Q. Assuming the tide runs three miles an hour at that point?

Mr. HUGHES.—Same objection.

A. It would seem to be feasible to sheer the ship one way or the other.

Q. Under the facts and circumstances assumed in questions already asked, would you say that the "Rickmers" was negligent in not paying out more cable when forward of the "Mildred" and "Corona"; if so, why, if not, why? Please answer fully and give your reasons.

Mr. HUGHES.—Same objection as before, and further that it is incompetent, calling for the conclusion and opinion of the witness without proper foundation laid.

A. I think the "Rickmers" had plenty of chain out under the original first question, but when the wind freshened he ought to have paid out more chain, and she apparently made an effort to do so at ten o'clock that night. I do not know that she took this precaution in proper time, or not, but she apparently made an effort to pay out more chain when the wind freshened, which was a proper proceeding.

Q. Assuming the velocity of the wind and the position of the vessel and the management and seamanship of the master and crew of the "Rickmers" to have been covered by the questions already asked, what further, if anything could have been done in the usual

(Testimony of Lieutenant Powers Symington.)

course of navigation and without damage to the schooners astern for the purpose of rendering the ship less liable to drag?

Mr. HUGHES.—Same objection.

A. She could have paid out more chain when she originally anchored, but under the conditions of the first question, it would not be necessary, she would not be called upon to do so. She could not do anything except take a longer scope of chain, that is all she could do.

Q. Later on would it have been prudent to have taken a longer scope of chain in view of the "Mildred" and "Corona" being off her stern?

Mr. HUGHES.—Same objection.

A. I should think, so, yes.

Q. You would not have advised a much longer scope of chain, would you, Lieutenant?

Mr. HUGHES.—Same objection and further that it is leading.

A. Yes, I think I should have advised a longer scope in a case of that kind when the wind freshened.

Q. When the wind is blowing ten and eleven on the Beaufort scale, what velocity does it indicate in miles per hour?

A. Nautical miles per hour from 56 to 65 miles.

Q. (Mr. HUGHES.) Fifty-six miles at ten and sixty-five miles at 11?

(Testimony of Lieutenant Powers Symington.)

A. Fifty-six at ten and 65 at eleven.

Q. (Mr. ASHTON.) What is considered hurricane velocity? A. Seventy-eight miles or more.

Q. And that of a heavy storm?

A. A heavy storm is not a nautical expression.

Q. Well, a storm.

A. A storm gale is 48 miles an hour.

(Testimony of witness closed.)

And thereupon, an adjournment was taken to go to Seattle to take the testimony of Lieutenant Lopez.

Seattle, Washington, 3:30 P. M.

Thursday, December 17th, 1903.

Present: Mr. HUGHES, for Libellant.

Mr. ASHTON and Mr. KELLY, for Respondent and Claimant.

Continuation of proceedings pursuant to adjournment as follows, to wit:

Lieutenant R. F. LOPEZ, a witness for and on behalf of respondent and claimant, being first duly cautioned and sworn, testified:

Q. (Mr. ASHTON.) What is your profession?

A. Naval officer.

Q. How long have you been a naval officer?

A. Twenty years.

Q. Are you a graduate of any naval institution or academy? A. The United States Naval Academy.

Q. At Annapolis? A. At Annapolis.

(Testimony of Lieutenant R. F. Lopez.)

Q. How many years have you had practical experience at sea? A. Twenty years.

Q. How much of that time in a general way have you had experience in the navigation of vessels?

A. Seven years of that time—about 6 or 7 years.

Q. Been on sailing vessels as well as steam.

A. Yes, sir. Three years in sailing vessels.

Q. Warships, I presume?

A. Yes, sir. I was in the New York schoolship for three years instructing for the Merchant Marine.

Q. What particular position or assignment to duty are you occupying now?

A. I am navigator of the "New York."

Q. Navigating officer of the "New York."

A. Of the "New York."

Q. Of the United States Cruiser "New York"?

A. Yes, sir.

Q. How long have you served as navigating officer of any of the ships of the navy?

A. That is what I was saying—about 6 or 7 years.

Q. Now, Lieutenant, I wish you would take this official chart which I hand you of the United States States Coast and Geodetic Survey, No. 6439, being a chart of Shilshoal Bay here on Puget Sound, and please locate thereon, first the position of a vessel bearing north thirty-three degrees east true and distant three-quarters of a nautical mile from West Point. Now, please mark the vessel which you have so located "R.

(Testimony of Lieutenant R. F. Lopez.)

L." Now, please locate another vessel bearing north thirty-eight degrees east true and distant seven-eighths of a nautical mile from West Point. Mark that, if you please, "C. L." Now, kindly locate the position of another vessel bearing north twenty-three degrees east true and distant three-quarters of a nautical mile from West Point. Mark that, if you please, "M. L." Now, another vessel bearing north twenty-nine degrees east true and distant one and one-quarter nautical miles from West Point. Mark that, if you please, "S. L." You have now located the position of these four vessels to which I have referred, have you, Lieutenant?

A. Yes.

Mr. ASHTON.—We will offer that chart in evidence and ask that it be received and filed as Respondent's and Claimant's Exhibit No. 11.

Mr. HUGHES.—Objected to as immaterial and for the reason that no proper foundation has been laid for its introduction in evidence in this case.

(Chart referred to, offered in evidence, marked for identification as Claimant's Exhibit No. 11 and returned and filed herewith.)

Q. Lieutenant, that is a regular official chart, is it?

A. Yes.

Q. As used by the naval and other navigating officers? A. Yes, sir, the same chart.

Q. The only chart in use in this country as far as you know—American chart?

(Testimony of Lieutenant R. F. Lopez.)

A. It is the one we use in the navy.

Q. It is the one? A. Yes.

Mr. ASHTON.—We reoffer it at this time.

Mr. HUGHES.—Same objection as before.

Q. Now, Lieutenant, assume that the German bark "Robert Rickmers," 2200 tons, leaves her anchorage at Port Townsend on the morning of December 25, 1901, and proceeds under tow of the tug "Tacoma" on her way up Sound to Tacoma; the weather is clear and the wind is light from the south'ard. Afternoon the wind increases and the towboat captain signals that he is about to take the "Rickmers" to a temporary anchorage in Shilshoal Bay. The ship is taken to leeward of West Point to an anchorage which bears from West Point light north thirty-three degrees east true and distant three-quarters of a nautical mile, the same being the place where I asked you to locate a vessel which you have marked "R. L." It is extreme high tide at Shilshoal Bay at 2:48 P. M., and extreme low tide at 10:41 P. M., on the day in question. The "Rickmers" ground tackle is as follows: Her starboard anchors weighs, with stock 5,124 pounds, her port anchor weighs, with stock, 4,850 pounds, and each of her anchor chains are of the following dimensions: each are stud link chains of a total length of 135 fathoms, weight of 6,300 weight; length of link twelve and three-quarters inches; breadth of link seven and three-sixteenths inches; size or diameter of link two and one-sixteenth; breaking strain

(Testimony of Lieutenant R. F. Lopez.)

in each link of fifteen fathoms, one hundred and seven and one-tenth tons; tensile strength seventy-six and five-tenths tons; her anchors and chains are certified by Lloyd's and she is equipped with the usual appliances in the way of capstan, compressor, etc. Lying in the bay at the time are three schooners located as follows: the "Corona," a three-masted topsail schooner of three hundred and ninety-four tons, was at an anchorage which bore from West Point light north thirty-eight degrees east true and distant seven-eighths of a mile nautical, the same being the point which you have marked "C. L." The "Mildred," a three-masted topsail schooner of four hundred and eleven tons, was at an anchorage which bore from West Point light north twenty-three degrees east true and distant three-quarters of a nautical mile; I refer to the point which you have marked "M. L." The "Stimson," a four-masted topsail schooner, was at an anchorage which bore from West Point north twenty-nine degrees east true and distant one and one-quarter miles nautical; I refer to the point which you have marked "S. L." The "Stimson" is a schooner of seven hundred and one tons. The "Rickmers" was brought to her anchorage about four o'clock P. M., in fourteen fathoms of water amidships, dropped her port anchor and paid out forty-five fathoms of chain. It is the custom of Puget Sound ports that the towboat's captain in taking vessels in tow up and down Sound assumes, also, the duties of pilot. The

(Testimony of Lieutenant R. F. Lopez.)

captain of the towboat in this case was a licensed pilot and indicated the anchorage to the captain of the "Rickmers," who was a stranger to those waters, this being his first voyage to Puget Sound; under those conditions and circumstance did the "Rickmers" display good seamanship and judgment in anchoring in the place and manner indicated?

Mr. HUGHES.—Objected to for the following reasons: 1st, the question is not a proper hypothetical question; second, it is not a proper subject for a hypothetical question; 3d, that no proper foundation has been laid for any hypothetical questions; and the facts set forth in the question are not based upon facts proven in the evidence nor consistent with them, and is therefore incompetent and immaterial.

A. Yes.

Q. Please give your reasons fully for that answer.

Mr. HUGHES.—Same objection and further that the question calls for an argumentative answer.

A. The man being a licensed pilot had a perfect right to show where the vessel should anchor, and the captain of the vessel was right in taking his advice.

Q. Lieutenant, assume all the conditions of the first question and in addition thereto the following: The "Rickmers" in coming to her anchorage split the foundation of her port compressor, the same being a wooden block, and ten or fifteen fathoms of her port chains runs

(Testimony of Lieutenant R. F. Lopez.)

away; the tugboat which is standing by passes a hawser and hauls her back to her former anchorage, or perhaps to one a little more in shore. The "Rickmers," while this is being done overhauls the slack of her port chain and lies to her port anchor, having forty fathoms of port chain out and having rigged a relieving tackle thereon by using two full blocks, each having a two-inch in diameter hook with a rope rove through them and stoppered on the chain and foremast. Her starboard anchor is dropped, also, and thirty fathoms of her starboard chain is paid out; under these conditions and circumstances were those precautions sufficient and seamanlike and was the relieving tackle described, sufficient and seamanlike?

Mr. HUGHES.—Same objection as before.

A. Yes.

Q. Please state your reasons fully for so answering.

Mr. HUGHES.—Same objection.

A. The reasons would be that there was sufficient chain out to hold her under the conditions on the two anchors.

Q. Lieutenant, assuming the conditions of the first and second questions, was it good seamanship under the circumstances of wind, weather and anchorage, for the "Rickmers" to lay in this temporary berth with two anchors out, having thirty fathoms of chain to starboard and forty fathoms of chain on her port anchor, stoppered as described.

(Testimony of Lieutenant R. F. Lopez.)

Mr. HUGHES.—Same objection.

A. Yes.

Q. Now, assume the conditions of the first, second and third questions which I have just asked you, and in addition thereto, the following: Five hours have elapsed and it is about ten o'clock P. M., the wind is from south, southwest, veering a point or two each way and is blowing in gusts up to ten and eleven on the Beaufort scale. The hook on one of the blocks of the relieving tackle is carried away and the ship begins to drag. The starboard chain is paid out as rapidly as possible, but the anchor does not hold and another and similar relieving tackle is rigged to the port chain when it is discovered that the chain has parted and the anchor is lost. The "Rickmers" passed off to leeward, gets athwart the hawser of the "Mildred," carrying away the "Mildred's" jib-boom, gets clear and passes to leeward on the "Mildred's" port side until she fouls the "Stimson's" starboard bow; under the conditions of wind and weather do those facts show any want of care or seamanship on the part of the "Rickmers"?

Mr. HUGHES.—Same objection.

A. No.

Q. Please give your reasons.

Mr. HUGHES.—Same objection.

A. Well, I would say she had done all that she could under the circumstances, as far as seamanship goes.

Q. Lieutenant, assume all the conditions of the first,

(Testimony of Lieutenant R. F. Lopez.)

second, third and fourth questions and in addition thereto the following: The night is clear and without fog, but the sky is overcast and there is occasional rain. All the vessels are properly equipped with lights, etc. The "Rickmers" drags her anchors not later than eleven o'clock P. M., gets into collision with the "Mildred" as described, and comes down on to the "Stimson." From the time the "Rickmers" has first begun to drag until she came into collision with the "Stimson," not less than a half hour elapsed. The "Stimson" was lying at one anchor on one hundred and five fathoms of cable; under those circumstances of wind, weather and anchorage was it within the power of the "Stimson" to take steps to avert the collision?

Mr. HUGHES.—Same objection.

A. She might have taken some steps, but I do not think she could have done anything. There were certain things she might do, but it is a question whether it would have cleared her or not.

Q. What steps might she have taken or could she have taken?

Mr. HUGHES.—Same objection.

A. If the tide was running strong she might have used her helm to give her a sheer. She might also have hoisted her head sail.

Q. Now, that is all on the basis that she had a proper lookout and knew what was coming?

(Testimony of Lieutenant R. F. Lopez.)

Mr. HUGHES.—Same objection.

A. Yes; which I take for granted in answering the questions.

Q. Under the facts and circumstances assumed in the questions already asked you, would you say that the "Rickmers" was negligent in not paying out more cable when forward of the "Mildred" and "Corona"; if so, why, if not, why? Please answer fully and give your reasons.

Mr. HUGHES.—Same objection as before.

A. That would depend on the distance from the other vessel—her distance from the other vessels, which I do not know at present. I have not taken these measurements.

Q. Please arrive at the distance that the "Corona" and the "Mildred" were from the "Rickmers" by scaling the chart.

A. It would be about seven hundred and fifty feet.

Q. That each was from the "Rickmers"?

A. Yes; about an eighth—that is, the "Rickmers" was that distance from the "Mildred."

Q. That the "Rickmers" was from the "Mildred"?

A. That the "Rickmers" was from the "Mildred," yes.

Q. Is that the stern of the "Mildred"?

A. No; that is the position that I have indicated upon the chart here.

(Testimony of Lieutenant R. F. Lopez.)

Q. Now, you had better let me tell you there, assuming that the "Rickmers" was two hundred and sixty-seven feet in length; would that cut any figure in the distance?

A. They are at anchor, it would depend on this—you have got the position here, in all probability the position from the compass where the bearing was taken.

Q. Well, give me the distance according to the compass bearing and scale.

A. It would be seven hundred and fifty feet. In all probability that would be about three-quarters of her length that would be astern.

Q. Now, what distance was the "Corona" away?

A. From the "Rickmers"?

Q. From the "Rickmers"?

A. I should say, as well as I can measure on here (referring to chart), a little more than an eighth.

Q. A little more than an eighth of a mile.

A. Yes; about, say, three-sixteenths.

Q. That would be how many feet away?

A. Eleven hundred and twenty-five feet, say.

Q. Now, assume that the "Rickmers" had out the length of cable which I have referred to in the first hypothetical question put to you, and that she was 267 feet in length; and that the "Mildred" had out 65 fathoms of cable, and the "Corona" about 60 fathoms; what have you to say as to whether or not the "Rickmers" when she so first came to anchor should have allowed a greater scope of cable?

(Testimony of Lieutenant R. F. Lopez.)

Mr. HUGHES.—Same objection.

A. When she first came to anchor?

Q. When she first came to anchor and before she commenced to drag. Would it have been good seamanship in that berth with those schooners at her stern to allow more scope?

Mr. HUGHES.—Same objection.

A. No.

Q. Why?

Mr. HUGHES.—Same objection.

A. Because she was in as close proximity as it was prudent to get at the time.

Q. Now, after she commenced to drag was she negligent in paying out more cable?

Mr. HUGHES.—Same objection.

A. You mean by that was it paid out?

Q. Well, assume that she did pay out more; was she negligent in so doing when she commenced to drag?

A. No; she would have to do that. The only way of stopping her dragging would be to pay out. She was right in paying out under the conditions when she began to drag.

Q. In other words, she was justified in taking chances when the trouble arose? A. Yes.

Q. But not before that?

A. No; not before that.

Q. Now, Lieutenant, assuming the velocity of the

(Testimony of Lieutenant R. F. Lopez.)

wind and the positions of the vessels and management and seamanship of the master and crew of the "Rickmers" to have been covered by the questions already asked, what further, if anything, could they have done in the usual course of navigation and without damage to the schooners astern for the purpose of rendering their ship less liable to drag?

Mr. HUGHES.—Same objection as before.

A. I do not know of anything else they could have done.

Q. When the wind is blowing ten and eleven on the Beaufort scale what velocity does it indicate in miles per hour?

A. Well, as I remember it, it is about 65 miles.

Q. What is considered hurricane velocity?

A. That is, the limit of hurricane velocity on the Beaufort scale?

Q. No; the range of hurricane velocity?

A. That would be from ten to twelve, which would go from sixty miles to ninety miles per hour according to Beaufort, as I recollect it.

Cross-examination.

Q. (Mr. HUGHES.) Lieutenant, if you assumed that the "Rickmers" is at the place indicated on the map which you have identified here at the circle with the letters "R.L.", and the wind was blowing south-southwest and veering only one or two points, how would you account for the "Rickmers" drifting upon the schooner

(Testimony of Lieutenant R. F. Lopez.)

“Mildred,” located as you have located her upon this chart at the point indicated by the letters “M. L.”?

A. I could on account for it by the current and the shifting of the wind two points—well, the wind was south-southwest, you say?

Q. From south to south-southwest.

A. Is that the true direction? This compass is with a variation, so we expect that the true compass is the other way.

Q. The directions are given nautical.

A. Yes; the directions are given nautical. Well, if it would shift two points with the current it might take her on the “Mildred.”

Q. So as to collide with the jib boom of the “Mildred” if their positions were as located upon this chart.

A. Without dragging at all, you mean?

Q. No; if she dragged.

A. Yes, if she dragged, if the wind would shift her two points and put her around in the direction of the “Mildred,” it would put her just in that direction.

Q. What direction would the wind have to be coming to drive her down on the “Mildred”?

A. Have to be coming across here (showing on chart).

Q. Give us the points of the compass.

A. Well, we will say about—is that wind alone?

Q. Yes?

A. That would be east, southeast magnetic, about, or

(Testimony of Lieutenant R. F. Lopez.)

southeast—it would be about southeast—the wind came southeast true.

Q. Then to be carried from her position as located upon this chart the “Rickmers” would have to be driven by a wind from the southeast in order to strike the jib-boom of the “Mildred” as located upon this chart?

A. Yes; that is that would be in the direct line; a point each way would probably have the same effect.

Q. A point each way might— A. Yes, it might.

Q. — Influenced by the waves and current.

A. By the current, yes, would set her that way.

Q. Well, assuming that the wind and waves were such as to carry the “Rickmers” from the point indicated on this chart so as to strike the jib-boom of the “Mildred” at the point indicated on this chart, would the same wind and current take the “Rickmers” on so as to collide with the “Stimson” as located upon this chart?

A. No; it would not.

Q. Then, if, as a matter of fact, the “Rickmers” after dragging struck the jib-boom of the “Mildred” and after extricating herself—

A. Let me hear that last question read. (Question beginning, “Well, assume, then, that the wind and waves were such as to carry the ‘Rickmers’ from the point indicated on this chart,” etc., read to the witness.) No; not at that time—at that particular time. There might be a change afterward, of course, but at that particular time that she collided with the “Mildred” at that

(Testimony of Lieutenant R. F. Lopez.)

identical time, the current would naturally set her down in that direction, don't you see? And the wind might bring her around here and over there (showing on chart) for a time, and then if she shifted back here the current would take her in that direction (showing on chart).

Q. The current would not be liable to change, would it?

A. No; the current would be setting in the direction of this vessel all that time.

Q. Then if the tide was flooding, the current would not—

A. The tide was ebbing this time, was it not, running out?

Q. Assuming that the tide was flooding?

A. Assume that it was flooding?

Q. Yes, sir; at the time of the dragging and the collision.

A. At the time of the dragging and collision, yes.

Mr. ASHTON.—It was ebbing at the time of her first coming to anchor; it was flooding at this time.

A. (Continuing.) Let me ask you; you are having a flood tide at this time, and you say that the wind—

Q. I prefer to put my questions as Mr. Ashton did, purely hypothetically, Lieutenant, and we will take our chances between the counsel on the other side and myself as to whether the questions are based on the facts of the case with which you would not be concerned.

A. All right, just give me the conditions then.

(Testimony of Lieutenant R. F. Lopez.)

Q. Assume that the tide is flooding—let us go back to that now—and that the “Rickmers” is at the point located by you on this chart with the letters “R. L.” and the “Mildred” at the point indicated by you on this chart at the letters “M. L.”: Would a wind blowing from south to south southwest carry the “Rickmers” against the “Mildred” so as to strike her jib boom?

A. From south and south-southwest? No, it would not, that wind would not do it.

Q. Would the current, if the tide was flooding, have a tendency to set the “Rickmers” farther eastward than the “Mildred,” assuming that she starts from a point already to the eastward and south’ard?

A. Well, I do not know what the current is in this—along here (pointing on chart)—what the direction or set of the current is along there.

Q. Assume that the tide is flooding? A. Yes.

Q. Its tendency would be to set the “Rickmers” farther to the eastward and off from the “Mildred” instead of toward her as far as the current is concerned, would it not? A. Yes, assuming the current was—

Q. Of course, we are proceeding upon assumptions, entirely, Lieutenant?

A. Yes.

Q. You are not supposed to know anything about the facts and we are dealing entirely with assumptions here.

A. Yes.

Q. If the tide was flooding and the wind was blowing from south to south-southwest and the “Rickmers”

(Testimony of Lieutenant R. F. Lopez.)

came in collision with the "Mildred" at a point as located upon this chart by the letters "M. L." and she continued drifting from the "Mildred" with the wind and current, that would carry her—flood tide—would that carry her in the direction of the "Stimson" as located upon this chart? A. No.

Q. Which way would it carry her?

A. It would carry her in a southerly direction away from her. You see, the current, the flood tide, coming down there (showing on chart), would take her in that direction (showing on chart).

Q. What effect would the wind have, would it overcome the tide?

A. If the wind was stronger than the tide of course she would go with the wind.

Q. Would the wind, blowing from the south, to south-southwest, carry her in the direction of the "Stimson" from the "Mildred"? A. Yes.

Q. Independent of the current of the tide?

A. Yes.

Q. Now, if the vessel was drifting, would she be able to direct herself at all under those conditions so as to avoid the ship towards which she was drifting, in a distance such as indicated upon this chart between the letters "M. L." and the letters "S. L."?

A. She might be able to do it. I think—

Q. How would she do it?

A. By the use of her helm and sail.

(Testimony of Lieutenant R. F. Lopez.)

Q. What sail would she use?

A. Well, it would depend on the direction of the wind which way she wanted—she could set her head and after sails, she could use them just there.

Q. Assume that the wind is blowing from the south or south-southwest.

A. Yes, from the south, or south-southwest there. A vessel with her anchor down might be hoisting her head sails and the effect of the current bear her head off enough to give herself a sheer and clear another vessel; that is possible.

Q. What is the distance indicated here on this chart between the “Mildred” and the “Stimson”?

A. Half a mile.

Q. In that distance of half a mile, would not the “Rickmers” have ample time to escape a six or seven hundred ton schooner at anchor where the “Stimson” was by the use of her helm and sails, putting up—

A. Not for a certainty.

Q. Her small sails.

A. Not for a certainty—sure.

Q. Would it not be her duty to attempt to do so?

A. Yes.

Q. And when she knew a schooner was riding at anchor and she was approaching it under those circumstances it would be her duty to use her helm and also to put up small sails to escape her, if possible?

A. Yes.

(Testimony of Lieutenant R. F. Lopez.)

Q. Would she not have much better opportunity to do that than the schooner which was at anchor, your own vessel being under way? A. Yes.

Mr. ASHTON.—I move to strike out that last question and answer as not in line with the facts of the case, as it does not assume that the “Rickmers” was in a damaged condition, her lines and sails, disabled, some of them, and otherwise disabled through her collision with the “Mildred.”

Q. Suppose that the “Stimson” was at anchor in a storm blowing at the rate of ten or eleven according to the Beaufort scale, and all her cable was out; would she be able to do anything in the way of getting out of the way of an approaching ship?

A. If it were blowing ten or eleven, no vessel would hoist much sail at that time. That would apply to the other question, that is, they have ten or eleven, which I do not think is possible at the time, and neither one of them could hoist any sail to any account.

Q. Under those circumstances, would you say that the schooner “Stimson” with her cable all out could do anything to escape?

A. Nothing, except with her helm, provided, it was growing from ten to eleven. She might hoist a little—might hoist a little of her jib.

Q. That would be much less likely to free her than hoisting of a little of the jib on the moving vessel, would it not? A. You mean less likely to free her?

(Testimony of Lieutenant R. F. Lopez.)

Q. Yes, sir.

A. Yes; I think the vessel dragging, the effect of the head sail would probably—

Q. Give them much more scope and opportunity of escape, would it not?

A. No, I don't think so.

Q. You don't think so?

A. No, I don't think so. The cable would be taut out if she was dragging—

Q. No, but suppose her anchors were not touching bottom.

A. That could not be at all, she would be gone then.

Q. If the water was too deep she might be dragging without her anchors touching bottom?

A. Yes, if the water was too deep.

Q. If she did not have chain enough out?

A. Yes; but if the vessel was dragging and her anchor was touching bottom and the chain was taut out, it would have no more effect on her than a vessel that was at anchor.

Q. That was holding? A. No.

Q. Do you not think her motion would enable her to veer her direction much better than a vessel that was riding at anchor?

A. You can see by the amount of water here (showing on chart)—you say that she dragged down there (showing)—that her anchor must have been touching if she veered out, because you see there it is twenty-two

(Testimony of Lieutenant R. F. Lopez.)

fathoms, and twenty-four fathoms, and at that time she started with forty, you see, and she veered a great deal more. Her anchor must have been on the bottom at the time.

Q. Being in motion she could do more to veer her direction, could she not, than a ship that was at anchor?

A. No, not when she was dragging her chain, no.

Q. But your opinion is that under such circumstances, neither vessel could do very much to alter their direction then.

A. It would be a precaution that some might take, but it would have, in my opinion, very little effect.

Q. Now, Lieutenant, suppose that when the "Rickmers" was brought into this position and dropped her anchor the wind was blowing at the rate of six or seven on the Beaufort scale: What would you say as to whether forty to forty-five fathoms on the port anchor alone would be sufficient to properly hold her?

Mr. ASHTON.—I object to the question as it does not imply there were any schooners astern of her.

A. I think forty-five fathoms would be sufficient in an ordinary wind.

Q. When the wind was blowing six to seven on the Beaufort scale.

A. Well, six to seven—seven is a very strong blow.

Q. Would you say that forty to forty-five would be sufficient?

A. Forty-five would hold, but as a precaution—

(Testimony of Lieutenant R. F. Lopez.)

Q. Lieutenant, does not good seamanship require long scope to chain especially where the holding ground slopes toward the way the vessel is riding?

Mr. ASHTON.—I object to the question as it does not contemplate a state of facts shown by the evidence in this case?

A. There is a certain amount of chain beyond which of course I do not think it does any good at all. Forty-five fathoms is not that limit. I should say blowing seven that about—well, say, fifty to sixty fathoms would have been about the extreme limit.

Q. Lieutenant, is it not the custom among seamen to put out six fathoms of chain to every one of depth of water? A. No.

Q. In ordinary weather?

A. The rule is three times the depth.

Q. Is not the rule about six times the depth?

A. No, three times the depth; that is the way we do it.

Q. As the weather grows worse, as the wind increases, then the amount or scope of chain is increased up to about six or seven times, is it not?

A. Yes, either that or let go another anchor which in some cases would give a better effect than letting go an increased amount of chain.

Q. Is it not ordinarily true among seamen, especially among merchant marine, that it is deemed safer to have

(Testimony of Lieutenant R. F. Lopez.)

a longer scope of chain with one anchor than a short scope with two?

A. Well, that would depend on how short the scope was.

Q. Well, but answer the question generally.

A. Yes. You spoke of a short scope; of course if it is a very short scope it is not safe, but I should rather have down one anchor with forty-five fathoms and the other with thirty in a case like this than sixty fathoms out on one chain. I would have more chance of holding under those conditions.

Q. Well, would you not consider if the wind were increasing and a storm was developing the low barometer, that a careful navigator would be required to increase the scope of his chain as the weather grew worse?

Mr. ASHTON.—I object to the question as assuming conditions and a hypothesis that is not justified by the facts.

A. Yes, that would be the custom.

Q. Until he had out a cable about six times as long as the depth of water—six or seven times.

A. No, I don't think—not necessarily that amount anyway. I would not.

Q. Would you not require a longer scope of cable where you were anchored on a sloping shore and the storm was blowing off shore? A. Yes.

Q. Well, if the storm increased until it was blowing—gradually developing—into a gale, would you not con-

(Testimony of Lieutenant R. F. Lopez.)

sider that the amount of chain should be at least six times the depth of water?

A. Not in all cases, no. I should not take that as the rule.

Q. Ordinarily you would, would you not, especially where the holding ground was such as I have just described?

Mr. ASHTON.—We object to all these questions as they assume a wholesome berth and a clear berth for the ship, without any other ships astern of her?

A. In an anchorage such as you speak of, with a shelving and bad holding ground, I should have, say, about six times the amount of chain.

Q. Now, if the "Rickmers" was located at the point indicated by you on this chart by the letters "R. L." and the wind was blowing from south to southwest, what direction would she be riding, towards which boat, which ship?

A. About south-southwest; she would be riding, of course, in that direction (showing on chart).

Q. Riding in a general direction between the "Mildred" and the "Corona," would she?

A. Between those two vessels.

Q. Now, sir, assume that the distance between the vessels was an eighth of a nautical mile or more, would it not be entirely safe to increase the scope of the chain so as to reduce that distance between the vessels at least one-half?

(Testimony of Lieutenant R. F. Lopez.)

Mr. ASHTON.—We object to that question until the length of the “Rickmers” is given and the length of of hawsers which the “Corona” and the “Mildred” had out are given.

A. I should think that would be too near—one-half would be too near.

Q. Would you say they would be too near if there was a distance of four hundred feet between the vessels?

A. Yes. To make the distance between the vessels two hundred feet, would be too near, I should say.

Q. If you made the distance between the stern of one vessel and the bow of another vessel two hundred feet you would think that would be rather too little?

A. Rather too little.

Q. But it could come up to about two hundred feet, do you not think under those circumstances—no reason why it should not be safe up to that distance, is there?

A. I would not get as near as that unless forced to by some—

Q. Well, if the weather were growing bad—

Mr. ASHTON.—Let him finish his answer to your former question.

A. I should not get as near as two hundred feet under any conditions if I should avoid it.

Q. Well, if you found yourself at anchor in such a situation and the storm was increasing, you would pay out chain until you came within approximately two hundred feet under such circumstances, would you not?

(Testimony of Lieutenant R. F. Lopez.)

A. I would if I thought I would drag by not doing so.

Q. Now, if in coming to anchor, you had broken your compressor and had dragged and the storm increased to nearly double its force, as it was increasing you would pay out more chain—under those circumstances you consider there was danger, would you not?

A. I do not understand this question: In what case do you mean? In a case where you have a vessel in close proximity, say within two hundred feet of you?

Q. I will put the question in this way: Suppose that at four o'clock in the afternoon of the 25th of December, the "Rickmers," a vessel of about twenty-two hundred tons, net register, in tow of a tug is brought to anchor in Shilshoal Bay, being the bay shown on this chart which you have identified, and on the lee shore; the wind blowing from south-southwest, a tolerably stiff breeze, rated by some of the witnesses as high as six or seven on the Beaufort scale, and that at that time there are three schooners at anchor in the bay and she is taken inside or towards shore and southerly from the nearest schooner and she drops her port anchor and runs out about forty to forty-five fathoms of chain when she breaks her compressor block and drags and drifts down towards one of these schooners, namely, the "Corona," and the tug thereupon picks her up again and she again anchors; would you not say that under those circumstances a prudent mariner would put a greater scope of chain on if the opportunities permitted it?

(Testimony of Lieutenant R. F. Lopez.)

A. Well, greater scope than what?

Q. Than forty fathoms?

Mr. ASHTON.—We object to the question until it embodies the surrounding conditions and circumstances and particularly the positions and bearings of other vessels.

A. It is your question now that you would have more than forty-five fathoms out?

Q. More than forty?

A. More than forty alone, that is having one anchor.

Q. Yes, sir.

A. If she had only one I should put out—yes, she would probably put out more than forty.

Q. Now, I will ask you what would be the reason for the breaking of the compressor block under such circumstances? A. Well, I could not say.

Q. If the wind was blowing not more than six or seven on the Beaufort scale ought her compressor block to be sufficient, if properly handled, to resist the strain?

A. Well, a compressor block should stand—should be able to stand a strain under a light wind or anything of that kind. Why it should break, I do not know.

Q. A compressor block should be sufficient, if handled properly, to withstand even a gale, should it not? A. No.

Mr. ASHTON.—We object to the question.

Q. A very high wind?

(Testimony of Lieutenant R. F. Lopez.)

A. The strain is not taken on the compressor block alone; the chain would be around the bitt in addition to the compressor block.

Q. In addition to that? A. Yes.

Q. The bitts ahead the compressor?

A. Aft the compressor, if the compressor—I understand that the compressor there is where it catches the links of the chain?

Q. Yes.

A. Oh, back of that then the chain is taken around heavy bitts.

Q. I know, but no strain is taken on the bitts until after the compressor yields, is there?

A. In a gale you could take the whole strain on the bitt, you would not trust entirely to the compressor.

Q. In good seamanship you would, yes.

A. Yes.

Q. But, I say, suppose the storm was only blowing now six or seven by the Beaufort scale, not to exceed that at least, what would account for the breaking of the compressor block under those circumstances, would it not be defective or else improperly handled?

Mr. ASHTON.—Objected to as not proper cross-examination.

A. Of course it could come from any one of those causes.

Q. Suppose that the compressor block split just as

(Testimony of Lieutenant R. F. Lopez.)

soon as it got the strain upon the chain; what would that indicate?

Mr. ASHTON.—Objected to as not proper cross-examination and because no foundation has been laid to show the possibility of the witness answering the question.

A. Show a defect in the compressor block.

Q. Might it not show also that the compressor block had been put on before the chain had tautened after the anchoring and after the vessel had taken up the stretch of chain?

A. I do not think that would cause it to break.

Q. Well, ought the compressor to be applied until the vessel was riding an anchor, until it had taken up the stretch of cable?

A. Until there is a strain on the chain?

A. It might be, there would be no harm in her taking it before.

Q. But by fastening the compressor upon the chain you would get the sudden force of the ship's motion?

A. Yes.

Q. In suddenly jerking upon the chain, would you not?

A. Yes; but that would be a very small force. Where a ship is just paying out chain that is not very great—not strain enough to break.

Q. If the compressor block was in good condition?

A. In good condition, yes.

(Testimony of Lieutenant R. F. Lopez.)

Q. Do you think that using a tackle after the break of the compressor block, fastening the chain so it would be held by a hook an inch and a half or two inches in diameter, would make it as secure as with the compressor block in proper condition?

A. Well, the tackle put there was not intended to hold the chain, I do not think.

Q. What was it intended for?

A. It was simply to lighten it up. You could not possibly hold the chain by that. The chain must have been held by bitts or something, you could not hold it by the tackle.

Q. Suppose it was held by the tackle?

A. Alone?

Q. Yes, sir, except the chain was made fast to the windlass.

A. How large a tackle did you say that was?

Q. A four and one-half inch hawser with an inch and three-quarters hook.

A. An inch and three-quarters hook would not do it—would not hold the chain.

Q. If you had your port chain supported in that way after the compressor had broken would you consider that a safe reliance in an increasing gale—that port anchor?

Mr. ASHTON.—I object to all these questions and move to strike them out, both questions and answers, as not cross-examination and assuming conditions and

(Testimony of Lieutenant R. F. Lopez.)

facts also not established by the testimony heretofore given.

A. Is that question if this chain is held by a tackle with an inch and three-quarter hook?

Q. Inch and a half or inch and three-quarters?

A. No conditions would that be sufficient to hold the chain with nothing to rive by.

Q. Suppose that hook under the strain stretched—opened out—straightened out—and at or about the same time the anchor appeared to have been lost, how would you account for the breaking of the cable, would it be likely to be due with the defect of the cable?

A. The block could have nothing at all to do with the loss of the cable. Even with the hook opening out as you say, that would have nothing to do with the loss of the cable. The cable itself must have had a weakness in it.

Q. Would you consider such a tackle to be sufficient, coupled with the fact that the chain was made fast to the windlass to hold the port anchor—to hold the ship with a port anchor in a gale that was increasing from seven to ten or eleven by the Beaufort scale?

A. The capstan would be the main hold in this case. That tackle would—

Q. Suppose it is made fast to the windlass and the windlass gives way or becomes impaired; then you would make fast to the capstan, would you?

(Testimony of Lieutenant R. F. Lopez.)

A. Make fast to the capstan or the bitts—probably to the head bitt.

Q. If you found that your port block, compressor block had broken and you made fast with such a tackle as has been described, would you rely on that anchor or would you rely upon your starboard anchor under those circumstances?

A. That anchor would be just as reliable as the other even if the compressor block was gone, provided the chain was taken to the bitts or something that would hold, yes. I do not know—

Q. But if that were not done, would you rely upon it or would you place your reliance upon the starboard anchor.

A. I would in no circumstances trust to this block or tackle to hold the chain, but the port chain would be as good as the starboard, even after the compressor block was gone.

Q. Why, under what circumstances would it be?

A. If it were taken to a proper holding place, to bitt or something equally strong.

Q. Otherwise it would not be reliable in such weather? A. Yes.

Q. And unless it was made fast to a bitt or something equally strong? A. Yes.

Q. You would then put your reliance entirely upon your starboard anchor and chain, would you not?

A. Yes.

(Testimony of Lieutenant R. F. Lopez.)

Q. Having out the starboard anchor and chain with thirty fathoms of chain you would consider that sufficient in a gale that was increasing from six or seven in the evening up to ten or eleven by the Beaufort scale?

A. With thirty fathoms alone?

Q. Yes, taking nothing else but a port anchor stayed in the way I have described it.

A. No.

Q. Now, suppose the facts were as follows—I read you from the testimony of the first mate of the “Rickmers”; after the compressor block was split in pieces—the following testimony I read as given by the witness after the witness had described that the compressor block was split into two pieces: “Question. Now, you made fast a four and a half manila cable to the first links? Answer. Yes, sir, and slipped or shoved an iron bar through it so it could not slip through the links, like this, and hooked the tackle behind here, the chain strapped around the mast and hooked the tackle on here and the chain strapped around the mast and the other block here and heaved that out there. Question. That was held in position, the port chain, by a four and one-half inch manila cable. Answer. Yes, sir. Question. You mean four and a half inches in diameter. Answer. Yes, sir.” And suppose, also that it appears that this hook, iron hook, from an inch and a half to an inch and three-quarters was the means by which

(Testimony of Lieutenant R. F. Lopez.)

this manila cable was attached to the chain; would you say that that was sufficient to hold the cable?

A. No, I understand that this tackle was made fast to the manila hawser and then hooked into the chain. I can't get from what he says just how that tackle was secured.

Q. I am reading to you what he says on the subject.

A. It is not very plain. I can't make out just how that hook was secured from his explanation.

Q. He then proceeds to describe that this again parted, this second tackle, in the following language:

“Question. You mean then four and one-half inch manila hawser broke—parted? Answer. No, the hook

carried away. Question. The hook that fastened it to the mast? Answer. The hook that was fastened on

the strap. Question. From the tackle that fastened onto the chain? Answer. Yes; that carried away.

Question. That was in addition to this manila rope, was it? Answer. It was hooked into the manila rope,

that held it one way. Question. And the other way it was fastened on it? Answer. Yes, sir. Question. So

one of the fastenings that was hooked onto this manila rope carried away? Answer. Yes, sir. Question. But

that did not let the chain loose, did it? Answer. Just about five fathoms of chain ran out after that? Question.

Just about five fathoms of chain ran out after that. Answer. Yes, sir. Question. That would change its

position, but the port chain was still fast to the ship?

(Testimony of Lieutenant R. F. Lopez.)

Answer. We secured it with the windlass. Question. You had to haul it in again with the windlass. Answer. No, we never haul anything in with the windlass. After the anchor is down we slack the compressor—after the windlass is fast we turn this compressor up and let the strain come on that after that tackle carried away; this stopper on the windlass was fast; here was the windlass, but it was not strong enough and about five fathoms slipped out; then it holds and we started to put on another tackle, and the same time we started to put on another tackle the ship was moving.” Now, do you understand that to be sufficient to make that port chain and anchor secure?

A. Well, I do not know how he had that tackle secured to the chain yet. He had the chain around the windlass, I understand by that, and then he had this four-inch hawser. Well, we would suppose this four-inch hawser was taken to the chain, too, I would say secured to the chain, but not with an inch and a half hook, as you read, I would not infer from that, because there would be no use of having a four-inch hawser with an inch and a half hook, because the hook would go long before the hawser would taken anything of a strain on it. He must have had this four-inch hawser made fast to the chain in some way or other to help hold it.

Mr. ASHTON.—I move to strike out all this line of examination as not proper cross-examination.

(Testimony of Lieutenant R. F. Lopez.)

A. (Continuing.) I do not know how that thing was secured from his explanation.

Q. Well, you would not consider any method of securing the chain by such a tackle sufficient to hold the ship would you, to hold the anchor or chain?

A. With a hook of that size?

Q. No.

Mr. ASHTON.—I move to strike it out as not in line with the facts and as not cross-examination.

Q. Suppose, as stated in the testimony just read to you when this hook gave way the second time, that is, when the hook itself gave way and it slipped out five fathoms, as described that the ship was already dragging; what would it then be good seamanship to do in respect to the starboard anchor as to which there had been no trouble?

A. The starboard anchor having how much on it, how many fathoms?

Q. Thirty fathoms.

Mr. ASHTON.—Well, what depth of water?

A. Pay out more chain.

Q. Assuming the depth of water to be in the neighborhood of fourteen fathoms?

A. Yes, and that the other chain did not hold.

Q. Now, if the ship was allowed to drag until it struck the "Mildred" before they paid out more chain on the starboard anchor, would that be good seamanship?

(Testimony of Lieutenant R. F. Lopez.)

Mr. ASHTON.—I object to that question as not in line with the facts.

A. If it is allowed to drag until she struck her, provided there was room enough—if by paying out she would have fouled her, there would be no use of paying out the chain, but you are saying there was room enough between them?

Q. Yes, sir?

A. Then she should have paid out more chain.

Q. Well, assuming there is approximately an eighth of a nautical mile between them?

A. And she begins to drag?

Q. And she begins to drag?

A. Then they would pay out more chain.

Q. Pay out more chain at once and not wait until she collides with the "Mildred"?

A. Naturally.

Q. So if she did not begin to pay out more chain until after she had collided with the "Mildred," you would say that was not good seamanship, would you?

A. No, it would not be.

Q. Suppose it was the opinion of the master that at the time of the parting of this hook, this iron hook that I have described attached to the shackling that was made fast to the port chain, that the anchor broke and was lost at that time.

A. That is, that the chain parted?

(Testimony of Lieutenant R. F. Lopez.)

Q. Yes, I mean not that the anchor broke, but that the chain parted?

Q. Was it not his duty in the exercise of good seamanship to immediately turn his attention to his starboard anchor and begin to pay out more chain?

Mr. ASHTON.—You mean before he dragged?

Q. Immediately upon his concluding that the—

A. That the port anchor was gone.

Q. That the port chain was broken and gone?

A. That the port chain had broken and that he had then—

Q. About thirty fathoms on his starboard anchor?

A. Yes; he should pay out then, that is, assuming that it was blowing in this way.

Q. Yes, sir; that it was blowing with an increasing gale? A. Yes.

Q. In his testimony the captain stated as follows: "Question. Do you know when the chain itself broke? Answer. I think it broke the moment the hook broke. Question. Meaning the hook which was a part of the tackle, of the luff-tackle that was made fast to the chain. Answer. Yes, sir. Question. You think it broke the moment the hook broke? Answer. Yes, sir." That being his opinion, what was it his duty to do, having left his starboard anchor intact with thirty fathoms of chain, with an increasing gale, under circumstances such as have been described in the other testimony with reference to the shore and the other boats?

(Testimony of Lieutenant R. F. Lopez.)

MR. ASHTON.—That is objected to as not proper cross-examination, because the depth of water is not given.

Q. The depth of water being from approximately fourteen fathoms at the place of his anchorage?

A. He should have turned his attention to his starboard anchor at that time, being the only one left.

Q. Would it be good seamanship to turn his attention to the port chain and endeavor to remedy that under those conditions or to turn his attention exclusively to his starboard anchor under the conditions that have been described?

A. Nothing could have been done with the port chain after it parted.

Q. Lieutenant, if as described by the mate of the "Rickmers," upon the breaking of this hook, this iron hook of an inch and a half to an inch and three-quarters in diameter, about five fathoms of the chain ran out before it brought up on the windlass, would it not follow necessarily that this hook was the primary support of the anchor chain?

A. Not necessarily. It might have been held both by taking it around the capstan and then from this hawser and the tackle—might have used both, but when the hook carried away it threw the whole strain on the capstan.

Q. Why should it run out, why would five fathoms of it run out, if it was made fast around the capstan?

A. Well, unless it was an angle like that (showing) I

(Testimony of Lieutenant R. F. Lopez.)

do not know. Five fathoms—I do not see where it should.

Q. You do not see how it could run out five fathoms unless this hook was supporting it primarily, do you? It would seem necessarily to follow, would it not?

A. Yes. From the fact that the hook carried away and five fathoms went out—it would not mean necessarily that it was holding the—preventing the whole chain running out, because it was not, the chain was around the windlass, too—

Q. Yes, but I mean it would be holding the—

A. Holding the biggest part of the strain and the strain was on that hook. That is, from the way, as well as I can understand—

Q. His language? A. Yes.

Q. On which side of the “Rickmers” would the “Mildred” be if the locations were as you have described them on this chart, the port of the starboard side?

A. When they were riding what, to the ebb tide?

Q. When they were riding at anchor in the positions in which you have located them on this chart.

A. Well, you see riding in that direction (showing on chart) the “Mildred” would be on the starboard side of the “Rickmers.”

Q. (Mr. ASHTON.) In an ebb tide?

A. Running an ebb tide, she is heading that way (showing on chart), her starboard side is her right.

(Testimony of Lieutenant R. F. Lopez.)

Q. (Mr. HUGHES.) Suppose all the ships were heading bows to the shore?

A. Suppose they were all heading towards West Point—that way (showing on chart)—then the “Mildred” is on the starboard side of the “Rickmers.”

Q. Suppose they were heading in the direction of the wind, towards the south?

A. Still beyond the starboard side. If they headed in that direction (showing on chart) the “Mildred” would be on the starboard of the “Rickmers.”

Q. Then if the mate of the “Rickmers” said that the “Mildred” was on their port side your location there would not be correct, would it?

A. No, she was not on the port side.

Q. Suppose that a flood tide was running and a gale was blowing of ten or eleven by the Beaufort scale; how long would it take the “Rickmers” to drift from the location of the “Mildred” to that of the “Stimson,” fixing their locations as shown on the chart you have identified?

A. I could not tell.

Q. Approximately how long?

A. There are so many conditions in it; it depends on the strength of the tide—

Q. The tide would be running the other way, would it not, if it was flooding?

A. Yes, sir; if it was flooding, and against the wind, but her speed would depend on the strength of tide and also on the vessel itself. Some vessels drift faster than

(Testimony of Lieutenant R. F. Lopez.)

others, but you would have to know at any rate the strength of the tide, then you could approximate it.

Redirect Examination.

Q. (Mr. ASHTON.) Lieutenant, if the wind was blowing ten or eleven on the Beaufort scale and the "Rickmers" being of the tonnage mentioned, and she being light or only partially in ballast, coming in here for cargo, her anchors dragging, one or both of them, and he having out not to exceed thirty fathoms of chain, how long would it take her to drift four hundred feet with the wind at that usual velocity?

A. I could not tell how long it would take.

Q. It would take but a very few minutes, would it, Lieutenant?

A. No one could tell you that because you could not tell what effect her anchors would have. They might be dragging and catching and all that—no one could tell.

Q. Suppose they were simply dragging?

A. She may have had them up.

Q. Suppose they dragged and continued to drag?

A. I could not tell.

Q. At any rate it would only take a very short time, would it not?

A. Four hundred feet?

Q. Yes, sir.

A. It would not take very long, but I could not pretend to say what speed she would drag.

Q. Assume that these ships are in the positions you have indicated on that chart, Lieutenant, and that the tide

(Testimony of Lieutenant R. F. Lopez.)

was flooding, and that the wind was veering from due south to south southwest; would you then place the "Mildred" on the starboard side of the "Rickmers" or astern of her, or nearly so?

A. That can be shown very easily if you will give me whether you have the true direction.

Q. The true direction of the wind?

A. Yes, the true direction, or the—because here is a difference of two points.

Q. Or twenty-three degrees, say.

A. Yes; it would make a difference of two points; that is simply a matter of putting the thing on your ruler—then another thing, you have got the position of the ships here and have not got the position of their anchors, and you can't tell, this vessel (showing) may have been riding on her anchor way up here (showing); she would have all that are to swing in.

Q. In other words, with the wind veering from south to southwest or two points—

A. Well, taking that to be true south then—

Q. True south and true south southwest; now, you have got a variation of how much?

A. Two points.

Q. Eleven and three-quarters degrees in a point, you would have a variation there of a little over twenty-three degrees?

A. Yes.

Q. And the tide is flooding? A. Yes.

Q. Is it not possible with a wind of that velocity and

(Testimony of Lieutenant R. F. Lopez.)

having that variation for the "Mildred" at times to be almost if not quite, astern of the "Rickmers."

A. No; if the wind—the question comes on the strength of the tide. If she is riding to the wind—

Q. Say it is full flood?

A. Yes; full flood does not make any difference; a wind blowing ten or eleven—sixty-five miles an hour—I would say would have complete control of the ship at the time—tide would not be strong enough to affect her; in that case if she came around to south you can see—there is the direction of south (showing on chart), and that would be the line on which they were.

Q. Draw a line with pencil on that chart showing that.

A. (Drawing on chart.) That would be south.

Q. Now, draw a line with the wind going south southwest.

A. There it is (drawing)—there are the two lines running south.

Q. Both south? A. Yes.

Q. Now, draw that running south-southwest.

A. South-southwest would be here (showing and drawing on chart).

Q. (Mr. HUGHES.) Are you giving the true direction again the same way as before?

A. Yes, the true direction again, that would not alter the positions. But that in itself, I say, would not show anything, because you have got to draw from their anchors, not where the ships were themselves. They swing

(Testimony of Lieutenant R. F. Lopez.)

from their anchors; we are taking this position just as if we were taking it from their anchors. That is the stationary point, you see. Suppose there is her anchor up here (showing on chart) and she is riding that way (showing); when she came around to the south she would swing clear around to her anchor and might swing right into it.

Q. (Mr. ASHTON.) Now, Lieutenant, just a minute; the wind is blowing, we will say, from sixty to seventy miles an hour; the "Rickmers" is loose, she is dragging; the "Mildred" is fast; the tide is flooding and the wind is veering anywhere within two points; would not that wind create such a havoc with those ships and have such control over them, one being loose and the other fast, that no man could tell, the "Rickmers" would be as liable to be thrown against the "Mildred" as against the "Corona," or vice versa?

Mr. HUGHES.—Objected to as argumentative, incompetent, immaterial, and not a proper hypothetical question.

A. The "Rickmers" is dragging, you say?

Q. The "Rickmers" is dragging and the "Mildred" being fast and the wind in that condition?

A. Blowing a gale and shifting several points?

Q. Yes, blowing more than a gale.

A. Yes, they might be brought together.

Q. Shifting two points? A. Yes.

(Testimony of Lieutenant R. F. Lopez.)

Q. Now, speaking about this hook carrying away; if that hook had carried away and five fathoms run out and the hook was fastened or holding a shackle, which shackle formed an angle, say an acute angle or right angle, and the five fathoms ran out, that five fathoms would be the length that was taken up, would it not, on the shackle when it was brought up taut? In other words, the angle would be reduced to a tangent when brought up short?

A. If you will show me—that hook is something I don't understand at all in this thing. I don't know how it was made fast. If you will show me how the hook was made fast, as you suppose, then I will be able to answer that, but I can't tell from what Mr. Hughes read about the hook.

Q. Well, assuming that the hook was made fast into the cable—

A. Suppose there is a chain coming in there (showing), say he had taken it from the windlass, and around the windlass there (showing). Now, where is this hook made fast and how? What part does it play in this (showing)?

Q. The hook, as I understand it, was made fast to the cable to tether it, you might say, or to keep it from going out along about this point (showing).

A. It is hooked into the chain there?

Q. Yes, and the hook is that which attached the shackle here to that cable at that point, and—

(Testimony of Lieutenant R. F. Lopez.)

A. Attached the shackle? What do you mean by that?

Q. As I understand it the hook was at the end of the chain which was used as a shackle for the purpose of shackling it onto the cable.

A. Well, of course a shackle means a different thing. They have just a chain here coming out like that (showing)?

Mr. HUGHES.—I do not know how you are going to get that kind of testimony into the record, and I certainly cannot get in an objection to it. Put your questions so they will get in the record and I will get an objection to them.

A. (Continued.) Well, I will tell you, unless I know exactly how that thing is secured I can't answer it. It is impossible for me to answer unless I know. The whole thing depends on how that chain was secured and I could not answer unless I know exactly.

Q. Well, now if this hook when found was found not broken, but actually straightened out, or nearly so, drawn out, would you consider that there had been an undue and excessive strain on the hook? A. Yes.

Q. If the cable into which that hook was fastened carried away, would you not attribute the carrying away of that cable that is, providing it carried away by the cable itself parting, you would not attribute the carrying away of that cable to any weakness or insufficiency of strength on the part of the hook, would you?

(Testimony of Lieutenant R. F. Lopez.)

A. No.

Q. Now, Lieutenant, supposing you had been the captain of the "Rickmers," the wind was blowing, say, six or seven on the Beaufort scale, and we will say that it was increasing; your port anchor had carried away; you were holding by your starboard anchor alone with thirty fathoms of chain out; the night was dark, the same as it is at the present time when you are giving your testimony, same month in the year, except that it was some later in the evening, between nine and eleven o'clock; nothing was visible in connection with the two vessels astern of you and not over four hundred feet from your stern to the end of their jib-booms; you could see nothing of them excepting their lights; you as master of the "Rickmers" under those conditions would figure that they would be giving more scope—would have out all their scope or nearly so, would you not?

Mr. HUGHES.—Same objection as to the former hypothetical questions.

A. Nearly all, yes.

Q. What is the usual scope of a deep water vessel's scope of cable, how much would they carry generally?

A. How much chains do they carry in their lockers, the total amount?

Q. Yes.

A. A hundred and twenty fathoms.

Q. So that you would figure those schooners astern

(Testimony of Lieutenant R. F. Lopez.)

of you would have out anywhere up to a hundred fathoms, would you not?

Mr. HUGHES.—Same objection as before.

A. If it were a schooner I would say less.

Q. Well, you would figure on her having out how many fathoms?

A. Seventy-five, I should say.

Q. As a master mariner exercising prudence and your best judgment under those circumstances, you would figure on each schooner having out that much, would you not?

Mr. HUGHES.—Same objection.

A. Yes.

Q. Now, then, Lieutenant, if those schooners under those circumstances were not more than four hundred feet abaft of your stern and possibly off the stern to starboard or port, I care not whether they were directly astern or not, and you were anchored in only fourteen fathoms of water, would you in the exercise of good seamanship and when holding all right before commencing to drag, would you have paid out more cable on your starboard anchor?

Mr. HUGHES.—Same objection to the former questions.

A. If I were holding all right?

Q. Yes, sir; had not commenced to drag, would you

(Testimony of Lieutenant R. F. Lopez.)

have paid out more cable on your starboard anchor under those circumstances?

Mr. HUGHES.—Same objection.

A. Well, what are the conditions? How much chain has she out on her? It would depend on the amount of chain that I had out on the starboard anchor.

Q. Say you had thirty fathoms out and fourteen fathoms of water.

A. And only with one anchor holding?

Q. Only with one anchor holding and these schooners within four hundred feet of your stern or less and they with seventy-five fathoms of cable out each.

Mr. HUGHES.—Same objection.

Q. Would you have taken the risk of paying out more cable?

A. They were directly astern of you?

Q. Yes, and swinging in the wind so as to—

A. If they were directly astern I should not pay out.

Q. Now, suppose they were swinging in the wind—

A. So long as I was holding I would not.

Q. Now, supposing they were swinging in a wind of that velocity and the wind veering, but only two points and you were holding all right: would you in the exercise of seamanlike prudence pay out more cable?

Mr. HUGHES.—Same objection.

A. No. A variation of two points there would make very little difference with the vessels astern.

(Testimony of Lieutenant R. F. Lopez.)

Q. There would be great danger of their coming astern of you if they were not with that variation, would there not?

Mr. HUGHES.—Same objection.

A. Yes.

Q. Now, after you commenced to drag then your judgment would be quite different, as I understand you?

A. Yes.

Q. And you would take desperate chances, then, in other words, in order to catch and hold again?

Mr. HUGHES.—Same objection.

A. The only thing to be done when you drag would be to pay out—the only chance would be to pay out more chain.

Q. And take your chances of collision with those astern of you?

A. If you have cleared you would have to take the chances.

Q. When you say that in the navy you figure on paying out chain to the extent of three fathoms of chain for every fathoms of depth of water—

A. Yes.

Q. That is your rule, is it not?

A. Yes, three times the depth; it is the general rule.

Q. Now, then, Lieutenant, that contemplates a free and a fair berth, does it not? In other words, if you have a berth in which you are liable to foul other vessels

(Testimony of Lieutenant R. F. Lopez.)

you do not adopt that rule? If the proximity of other vessels is such that you must reduce the rule you do not follow it?

A. No, of course not. If there is danger of fouling or—

Q. In other words, when you give that rule it contemplates a free and a fair berth for your vessel?

A. Yes.

Q. Am I right? A. Yes.

Q. Lieutenant, we will say the wind is blowing from sixty to seventy miles an hour and the "Rickmers" is adrift, not holding, and under conditions and circumstances whereby it is impossible for one or both of her anchors to catch and hold: would not that wind swing her about and turn her almost as it would a barrel so that she could not handle herself with her helm?

Mr. HUGHES.—Same objections as to the former hypothetical questions.

A. Her anchors are dragging or—

Q. She is adrift absolutely, her anchors not dragging upon anything? A. They are off the bottom.

Q. They are off the bottom.

A. Then what is the question?

Q. She would be a helpless, whirling derelict before the wind, would she not?

A. Yes. If your anchors are not touching the bottom she would be helpless.

Q. And could not be controlled by her helm?

(Testimony of Lieutenant R. F. Lopez.)

A. Could not be controlled by her helm.

Q. Assuming that she had no canvas?

A. No.

Q. And you would not attempt to put canvas on her, would you under those conditions, with the wind blowing that velocity and the vessel making for a lee shore.

Mr. HUGHES.—Same objection.

Q. Is it good seamanship to set a sail with the wind blowing sixty or seventy miles an hour.

A. If you are drifting on a lee shore you would be— anything to get you out would be—

Q. Yes, but, Lieutenant, supposing that the wind is in such a direction—

A. A lee shore means that the wind is blowing directly on shore.

Q. Assuming that the setting of the sail would have a tendency to throw you towards the shore, would you set a sail with a wind of that velocity?

Mr. HUGHES.—Same objection.

A. Certainly not.

Q. Now, Lieutenant, in your testimony upon cross-examination you spoke of it being possible for the "Stimson" by the use of her helm or possibly by the throat of one of her sails, assuming that it could have been raised slightly in such a storm—such a gale—to have sheered herself or swung herself in such a way as to have permitted the "Rickmers" to have gone clear of

(Testimony of Lieutenant R. F. Lopez.)

her; you spoke of it being possible if I understood you correctly.

A. It is possible, yes, that is my statement.

Q. Now, then, in addition to that I want you to assume that the "Stimson" at that time had out one hundred and five fathoms of chain to but one anchor; do you not think it would have been probable a vessel coming down upon her so as to strike her port side or strike directly upon her bow, that by putting her helm to starboard and having that amount of cable out, one hundred and five fathoms, that she could have sheered to port to such an extent as to permit the vessel drifting upon her to clear her.

Mr. HUGHES.—Same objection as before, and as leading.

A. It would be nothing more than a possibility.

Q. A vessel finding herself in that way, in extremis, in that manner, if you had been her master you would certainly have made the attempt, would you not?

Mr. HUGHES.—Same objection.

A. Yes.

Q. Mr. Hughes asked you about the flood tide having a tendency to set the "Rickmers" easterly of the point on which you have located her upon this chart. Now, a flood tide would have the same tendency and same effect upon the "Mildred," would it not? In other words, a flood tide would—

A. A flood tide would act the same on both vessels.

(Testimony of Lieutenant R. F. Lopez.)

Mr. HUGHES.—Provided they are both at anchor.

A. Both under the same conditions.

Q. If this wind blowing at this extraordinary velocity was coming in gusts and was veering from south to south-southwest the strain upon ground tackle would be more terrific, would it not, than if it were a steady blow? A. Yes.

(Testimony of witness closed.)

And thereupon an adjournment was taken to some date to be hereafter agreed upon by proctors for the respective parties.

At Office of Struve, Hughes & McMicken,

Seattle, Washington, January 22d, A. D. 1904.

Present: E. C. HUGHES, for Libelant.

J. M. ASHTON, for Respondent and Claimant.

Continuation of proceedings pursuant to adjournment per agreement, as follows, to wit:

JOHN McT. PANTON, a witness for and on behalf of respondent and claimant, being first duly sworn, testified as follows to wit:

Direct Examination.

(By Mr. ASHTON).

Q. Please state your full name.

A. John McTavish Panton.

Q. What is your occupation?

(Testimony of John McT. Panton.)

A. Marine surveyor.

Q. Have you been a master mariner?

A. Yes, sir.

Q. For what length of time?

A. For fourteen years.

Q. What is your age? A. Forty-three.

Q. What experience have you had in the navigating of steam vessels?

A. Ever since I joined a steamer, why, I have been navigating. That was in 1885; and I have been navigating since I was an officer in 1878.

Q. You have been navigating as master mariner since 1885?

A. No, sir, not. I have been a master mariner since 1890.

Q. In what waters?

A. All around the Sound; and on the Pacific Ocean across to China and Japan.

Q. How long have you been engaged in running across the Pacific Ocean? A. Seventeen years.

Q. Constantly? A. Constantly.

Q. On what ships?

A. On the "Victoria" and the "Arizona."

Q. To what extent, if at all, has that caused you to acquire a knowledge as to the measurement of charts and the course of vessels?

A. Daily practice in navigation, and the strict examinations we have had to go through.

(Testimony of John McT. Pantón.)

Q. How many years have you been familiar with navigation and practical seamanship in Admiralty Inlet and Puget Sound? A. Eleven years.

Q. State whether or not you are familiar with the waters at West Point and Shilshoal Bay?

A. Particularly familiar with them, passing there going up and down.

Q. Are you familiar with the tides at about West Point?

A. Well, yes; as far as the tide tables goes.

Q. Speaking of tides generally, Captain, is there any length of time, and if so, what length of time is it that the tide is practically in abeyance when turning, ebb or flood?

A. We always allow between twenty and thirty minutes dead water—still water.

Q. When the water is practically stationary?

A. Yes, sir.

Q. In turning from flood to ebb, or ebb to flood?

A. Yes, sir, in turning. Twenty minutes.

Q. Do you remember, at my request of making an examination of the charts in evidence in this case, the larger charts? A. Yes, sir.

Q. Wait a minute. Being Exhibits, Libelant's Exhibit No. 1, and Respondent's Exhibit No. 1?

A. Yes, sir.

Q. Now, calling your attention particularly to Libelant's Exhibit No. 1, state whether or not, at my request,

(Testimony of John McT. Panton.)

you read over the testimony in this case down to date, and examined Libelant's Exhibit No. 1 for the purpose of determining whether or not the bearings of the four different vessels entering into this testimony in this matter were correctly located on Libelant's Exhibit No. 1, or for the purpose of determining whether or not—for the purpose of determining the exact location—bearing from West Point of the vessels shown on Libelant's Exhibit No. 1? A. Yes, sir.

Q. Have you determined the exact bearing of the vessels shown on Exhibit No. 1? A. Yes, sir.

Q. Have you fixed those as the bearings upon any other chart? A. Yes, sir, on the small chart.

Q. I hand you this small chart of Shilshoal Bay and ask you if that is the small chart to which you refer?

A. Yes, sir.

Q. Are those (indicating) the bearings to which you refer? A. Yes, sir.

Q. Marked in red ink? A. Yes, sir.

Q. Who fixed these bearings?

A. I took them from the other chart.

Q. From the other chart? A. Yes, sir.

Q. And from the evidence which you read?

A. Yes, sir. From the evidence which I read.

Q. State whether or not the bearings shown upon this small chart which you now have are the bearings of the vessels from West Point, as shown by the testimony, on Libelant's Exhibit No. 1?

(Testimony of John McT. Panton.)

A. Yes, sir; exactly like it.

Q. Is there any difference in the position of the ships shown upon this small chart which you now have?

A. No, sir; this is an exact copy from the evidence.

Q. Have any one of the ships been transposed, the position changed? A. Yes, sir.

Q. Which one?

A. The "Mildred," instead of being the inside ship, was the outside ship; and I changed it.

Q. Why did you change it?

A. According to the testimony, it would be impossible for the "Mildred" to be there.

Q. To be inside, do you mean? A. Yes, sir.

Q. Then, according to the testimony, the ships were located as shown upon this small chart, which you have?

A. Yes, sir.

Q. So that in fixing the position of the "Mildred" on the inside upon Libellant's Exhibit "A," there is evidently a clerical error made by the witness in making this exhibit? A. Yes, sir.

Q. Well, now, what is the bearing of the "Corona" from West Point as shown by the evidence?

A. About south 38 degrees west, as near as possible.

Q. North, you mean, do you not?

A. The ship would be from West Point north 38 degrees east.

Q. And what distance was she from West Point?

A. About seven-eighths of a nautical mile.

(Testimony of John McT. Pantou.)

Mr. HUGHES.—Which ship is that?

The WITNESS.—The “Corona.”

Q. (By Mr. ASHTON.) How did the “Mildred” bear from West Point? A. North 23 degrees east.

Q. Are these bearings you are giving true?

A. These are true bearings, sir.

Q. What distance was the “Mildred” from West Point?

A. Three-quarters of a mile.

Q. You mean nautical miles, don’t you? Always?

A. Yes, sir, nautical miles.

Q. How did the “Stimson” bear from West Point?

A. North 29 degrees east true.

Q. And what was her distance from the point?

A. One mile and a quarter.

Q. That is all, Captain, just now.

Mr. ASHTON.—We now offer in evidence the small chart identified by the witness as the chart upon which he has placed the positions of the four ships.

(Paper or chart marked Respondent and Claimant’s Exhibit No. 12.)

Q. Now, calling your attention to exhibit marked 10 and 11, state whether or not you have examined Exhibit No. 11; and if so, state whether or not the positions of the ships as shown upon that exhibit are identical or substantially so with the other charts now offered in evidence?

A. Well, substantially so. Not exactly. It is not exactly the same.

(Testimony of John McT. Panton.)

Q. What difference would there be in the way of distances, if any?

A. Probably two hundred feet, or something like that. An immaterial difference.

Q. That is, in the distances from the Point?

A. In the distances from the Point. No, no. The distances from one another. The distance from the Point correct; agree with the chart.

Q. Can you tell from these charts, and from the testimony and the small chart Exhibit No. 12, which you have prepared therefrom, the distance that the "Corona" and the "Mildred" were from the stern of the "Rickmers"?

A. I could measure it.

Q. I wish you would measure it and state the distance they were?

Mr. HUGHES.—I think you did that a moment ago.

A. Well, we did measure the three—

Q. (Interrupting.) I want him to triangulate the ships now.

Mr. HUGHES.—He don't know anything about that.

Q. I mean according to the evidence and the charts?

Mr. HUGHES.—If you are going to have him base his evidence upon other evidence, I will object. He can fix the distances as located upon the chart from the Points, as to what the evidence shows in respect to the charts and the ships is a question for the Court to make his own conclusions.

(Testimony of John McT. Panton.)

Q. Well, all right. What is the distance on the charts between the point where the "Rickmers" is shown and the point where the "Corona" is shown?

A. From the "Corona"?

Q. Yes. From the stern of the "Rickmers" to the "Corona"?

A. Three-sixteenths of a mile; 1140 feet.

Mr. HUGHES.—That is, between the "Corona" and the "Rickmers"? A. Yes, sir.

Q. What is the distance between the "Mildred" and the "Rickmers"?

A. Substantially the same for the two ships.

Q. Three-sixteenths of a mile?

A. Six thousand and eighty feet is a nautical mile. Not a land mile, but a nautical mile.

Q. How many feet?

A. Eleven hundred and forty feet.

Q. And the "Mildred," you say, was substantially the same? A. Yes, sir; from the "Rickmers."

Q. That is, from the points on the charts, without allowing anything for the length of the ships?

A. Yes, sir.

Q. And without allowing anything for the length of cables out? A. Yes, sir.

Q. Now Captain, assuming that the German bark "Robert Rickmers" of 2,200 tons leaves her anchorage at Port Townsend on the morning of December 25th, 1901, and proceeds under tow of the tug "Tacoma" on her way

(Testimony of John McT. Panton.)

up the Sound to Tacoma. The weather is clear and the wind is light from the southwest. Finally, the wind increases, and the captain of the towboat signals that he is about to take the "Rickmers" to temporary anchorage in Shilshoal Bay. The ship is taken to the leeward of West Point to an anchorage which bears from West Point light north 33 degrees east true a distance of three-quarters of a nautical mile. It is extreme high tide at Shilshoal Bay at 2:49 P. M., and extreme low tide at 10:31 P. M. on the day in question. The "Rickmers" ground tackle is as follows: Her starboard anchor weighs, with stock, 5124 pounds; and her port anchor weighs with stock 4850, and each of her anchor chains are of the following dimensions: Each are stud link chains, of total length of 135 fathoms, and a weight of sixty-three hundred weight; length of link, twelve and three-quarter inches; breadth of link, seven and three-sixteenths inches; size of diameter of link two and one-sixteenth inches; breaking strain in each length of sixteen fathoms, one hundred and seven and one-tenth tons; tensile strength, seventy-six and five-tenths tons; her anchors and chains are certified by Lloyds, and he is equipped with the usual appliances in the way of capstans, compressors, etc. Lying in the bay at the time are three schooners, located as follows: The "Corona," a three-masted topsail schooner of 394 tons, was at an anchorage which bore from West Point light north thirty-eight degrees east true, and distant seven-eighths of a mile, nautical; the "Mildred," a three-masted topsail schooner of 411 tons, was at an anchorage which

(Testimony of John McT. Pantou.)

bore from West Point light north twenty-three degrees east true, and distant three-quarters of a mile, nautical; the "Stimson," a four-masted topsail schooner, was at an anchorage which bore from West Point light north twenty-nine degrees east true, and distant one and one-quarter miles nautical. The "Stimson" is a schooner of 701 tons. The "Rickmers" was brought to her anchorage about four o'clock P. M. in fourteen fathoms of water amidships, dropped her port anchor, and paid out forty-five fathoms of chain. It is the custom of Puget Sound ports that the towboat captains in docking vessels in tow up and down Sound assume all the duties of pilot. The captain of the towboat in this case was a licensed pilot and indicated the anchorage to the captain of the "Rickmers" who was a stranger to these waters, this being his first voyage to Puget Sound. Under those conditions and circumstances, did the "Rickmers" display good seamanship and judgment in anchoring in the place and manner indicated?

Mr. HUGHES.—I object to that question as not a proper hypothetical question, not being based upon a correct and proper statement of the facts established by the testimony, and further as irrelevant, incompetent and immaterial.

A. I don't think there was any bad seamanship displayed in the ship being anchored there, especially under the evidence of the weather being moderate and the captain being a stranger, and the tugboat captain always places the ship at her anchorage.

(Testimony of John McT. Pantón.)

Q. Now, Captain, assuming all the conditions of the first question, and in addition thereto, the following: The "Rickmers," in coming to her anchorage, split the foundation block of her port compressor, the same being a wooden block, and ten or fifteen fathoms of her port chain runs away. The tugboat, which is standing by, passes a hawser and hauls her back to her former anchorage or perhaps to one a little more inshore. The "Rickmers," while this is being done, overhauls the slack of her port chain and lies to her port anchor, having forty fathoms of port chain out, and having rigged a relieving tackle thereon by using two two-fold blocks, each having a two-inch in diameter hook with a rope rove through them, and stoppered onto the chain and foremast. Her starboard anchor is dropped also, and thirty fathoms of her starboard chain is paid out. Under those conditions and circumstances, what have you to say whether or not those were precautions sufficient and seamanlike, and was the relieving tackle sufficient and seamanlike?

Mr. HUGHES.—We make the same objection to that question as to the preceding one.

A. As under those circumstances, I consider the ship would lie with perfect safety, with both anchors down, and the amount of chain out; and I consider that the rigging of that relieving tackle was a very seamanlike act, and the gear quite strong enough for the purpose of the relieving tackle.

(Testimony of John McT. Panton.)

Q. What would you say as to whether or not the precautions were sufficient?

A. I would say that I consider the precautions quite sufficient.

Q. Assuming, Captain, the conditions of the first and second questions, was it good seamanship under the circumstances of wind and weather and anchorage, for the "Rickmers" to lie in this temporary berth, with two anchors out, having thirty fathoms of chain on her starboard and forty fathoms on her port anchor, stoppered as described?

Mr. HUGHES.—The same objection is made to that question.

A. Yes, sir; I would consider it was good seamanship.

Q. Now, assuming the conditions of the first, second and third questions which I have asked, and in addition thereto, the following: Five hours have elapsed, and it is about 10 o'clock P. M. The wind is from south southwest, veering a point or two each day, and is blowing in gusts up to ten and eleven on the Beaufort scale. The hook on one of the blocks of the relieving tackle is carried away, and the ship begins to drag. The starboard chain is paid out as rapidly as possible, but the anchor does not hold; and another and similar relieving tackle is rigged to the port chain, when it is discovered that the chain is parted and the anchor is lost. The "Rickmers" passes off to leeward, gets athwart the hawser of the "Mildred," carrying away the "Mildred's" jib-boom; gets clear and

(Testimony of John McT. Panton.)

Q. What could he have done?

A. He might have hoisted the head of his fore stay-sail; and he could have put his helm over and gone forward and given his ship a sheer, especially with that amount of chain on.

Q. Do you think he could have sheered her with his staysail or with his helm so as to have cleared the ship the size of the "Rickmers"?

A. Yes, sir; certainly he could, with the head of his storm sail he could have sheered broadside on his anchor.

Q. I would like to ask you a little more fully under the facts and circumstances, assuming now the questions which I have asked you to state the conditions, what would you have to say whether or not the "Rickmers" was negligent in not paying out more cable when forward of the "Mildred" and "Corona." If she was negligent, why was she negligent, and, if not, why wasn't she negligent. Please answer fully, and give your reasons?

Mr. HUGHES.—Same objection as we made to the former hypothetical questions, and further the question calls for an argumentative answer.

A. Do you mind putting that question to me again, Mr. Ashton?

Q. State whether or not, under the conditions and circumstances which I have mentioned, the "Rickmers"

(Testimony of John McT. Panton.)

was negligent in not paying out more cable when at anchor forward of the "Mildred" and the "Corona"?

A. No, I don't think there was any negligence shown.

Q. Now, why? Answer fully.

Mr. HUGHES.—Same objection.

A. The wind and sea being moderate at that time, I consider she had plenty of chain out, especially as it was only a temporary anchorage.

Q. What would you have to say when the wind freshened and it finally became a storm?

A. I would say that good seamanship would tell a man not to interfere with his cable at all as long as he was holding ground.

Q. Why?

A. The moment it started to blowing hard, paying out chain is very liable to break out the anchor out of the ground and start the ship again, paying out chain would, and probably, as I said before, going right down on top of these other ships.

Q. Assuming that the "Rickmers" had out the length of cable I have referred to, and assuming further she was two hundred and sixty-seven feet in length, and that the "Mildred" bearing from her as contended by claimant, had sixty-five fathoms of cable out, and the "Corona" had sixty fathoms out, and bearing from her as contended by claimant, and as I have stated, what have you to say whether or not the "Rickmers," when

(Testimony of John McT. Panton.)

Q. Ten is sixty-five miles, and eleven is seventy-five?

A. Yes, sir.

Q. What would you consider that? What kind of a blow is that?

A. In the China Sea, I would call it a hurricane or a typhoon.

Q. What is it called in Puget Sound, among sailors?

A. That is a high gale of wind; a very heavy gale.

Q. A storm?

A. Yes, I would call it that; yes, sir.

Q. How does it compare with a hurricane?

A. I don't think there is much to pick or choose between the two. I would as soon be in the one as the other.

Q. I employed or requested you, did I not, to go over the figures of the libellant and see whether there were any items therein which would hardly result from the collision?

A. Yes, sir.

Q. The items of damage? A. Yes, sir.

Q. Did you do so at my request?

A. Yes, sir; I did.

Q. Now, did you find any items which you thought were not the direct result of the collision, or which should not be allowed as a result of the collision?

A. Yes, sir; there were a few items, but it is so long ago that I forget what they are.

Q. I would call your attention to Exhibit "C" of the

(Testimony of John McT. Pantou.)

libelant, being Mr. Moran's bill for repairs to the windlass. What have you to say to that?

A. I remember that item. I thought it a very heavy bill. It would be ample to buy a new windlass.

Mr. HUGHES.—I object to the testimony of this witness upon that matter for the reason that he is not competent, and that the testimony is argumentative.

Q. What experience have you had in the buying and selling and repair of windlasses?

Mr. HUGHES.—Same objection.

A. Ever since I have been at sea I have been having experience in the repair business. I never did buy a windlass, but I know the price of them.

Q. What is the price of a new windlass?

A. You could get a very fine windlass new, for \$1,500; and less than that for a smaller ship, of course.

Q. Now, I call your attention to Libelant's Exhibit "F," being for labor bills, and ask you whether or not you notice any items thereon which could not result from the collision?

Mr. HUGHES.—Same objection; and further it is an attempt to interpose the judgment of this witness to that of the Court.

Q. I will ask you first if you made any memorandum of the items which you thought were not necessary result of the collision?

(Testimony of John McT. Panton.)

other items did you find thereon which in your judgment could not result from this collision?

Mr. HUGHES.—We object as immaterial; the witness could not judge what would result from the collision from an examination of the testimony.

A. The mate's fare paid to Tacoma; and this repairing mizzen on this disbursement sheet which happened before the collision took place at all.

Q. What is the amount of that?

A. December 20, ten dollars.

Mr. HUGHES.—It will be understood that all of my objections, without making them to each question, that the same objection shall be renewed to all of this class of testimony.

Mr. ASHTON.—I agree that Mr. Hughes may be considered as objecting to any part of this testimony under his general objection.

Q. What is the total of this?

A. And labor December 24th, added is thirty dollars; and there is fares from Blakely to Seattle and boat hire is seven dollars.

Q. What is the total amount of those items which is added up there?

A. Then there is master's wages for master and crew prior to December 25th, fifty dollars. That is prior to the accident.

(Testimony of John McT. Panton.)

Q. Now, why do you consider the wages of the master and mate and crew is not a proper charge?

A. There was no collision before the 25th of the month.

Q. And those items are all prior to the 25th of December? A. Yes, sir.

Q. Now, Captain, I call your attention to Libelant's Exhibit "F33," which with the exception of a few items contained almost the entire bill is for sea store?

A. Yes, sir, I remember it.

Q. Do you remember that bill? A. Yes, sir.

Q. Libelant's Exhibit "F33"? A. Yes, sir.

Q. Why did you report to me that in your judgment that was not a necessary charge arising from the collision?

Mr. HUGHES.—We object to that as assuming something not in evidence; incompetent, and leading.

A. I considered that the ship was only getting stores for sea, for these—it was sea stock, and she would have had to get it.

Q. Those are such stores as are used at sea, with a few exceptions?

A. Yes, sir, with a few exceptions it is for sea stock.

Q. I think that is all that I want to ask. Are these items in Libelant's Exhibit "F33"—or state whether or not these items in Libelant's Exhibit "F33" are such as are usually purchased by ships before going to sea?

(Testimony of John McT. Panton.)

A. Yes, sir; purchased for sea stock, or for the voyage.

Q. I think that is all.

Cross-examination.

(By Mr. HUGHES.)

Q. I understood you to say that you had read over the testimony in this case. Is that correct?

A. I read part of it. I don't know about it all. I don't know as I have seen it all.

Q. What part did you read, do you remember? The testimony of the officers and crew of the "Rickmers"?

A. I did some of it; not all.

Q. In giving your testimony, have you governed yourself at all by that testimony, or your conclusions either, from the reading of that testimony?

A. Oh, well, it might be a little bit that way, yes, sir.

Q. Captain, in answering the interrogatories that I propound to you, I wish to have you divest from your mind anything that you may have read in regard to the case? A. Yes, sir.

Q. And any discussion between you and Mr. Ashton in regard to the case, or its facts, or anything embraced in the questions propounded to you by Mr. Ashton, and simply to answer my questions as a mariner, without any reference to any other consideration except what is presented in the question. Will you do that? A. Yes, I will.

(Testimony of John McT. Pantou.)

Q. I believe you say you have had a good many years' experience as a mariner? A. Thirty years.

Q. Altogether on steam vessels?

A. Oh, no. I was brought up on a sailing ship, and was on sailing ships for eleven years; and the last three years I was chief officer on a sailing ship before going on steam.

Q. Captain, if a ship came to anchor under the shelter of a shore in which direction the wind was blowing from fifteen to seventeen miles an hour, and that ship were in ballast, and a large ship, say, having a capacity of twenty-one hundred tons, net register, or more than twenty-one hundred tons, net register, and a length of four hundred and sixty-seven feet, and a breadth of beam of forty-five feet, would you think that you would put out no more than forty-five fathoms of chain?

A. That is quite enough, with the force of wind. The standard rule is double the depth of water.

Q. You should govern yourself by that rule in answering that question? A. Yes, sir.

Q. With a wind of fifteen to seventeen miles an hour. In such a situation you think forty or forty-five fathoms of chain would be sufficient?

A. Quite sufficient, yes, sir.

Q. When you say quite, you would not think of putting out less than that?

A. I would not pay out more than forty to forty-five fathoms with what was on the windlass.

(Testimony of John McT. Pantou.)

Q. You would not pay out more than forty or forty-five fathoms, with a wind blowing fifteen to seventeen miles per hour?

A. There are so many questions governing that. You might say—

Q. (Interrupting.) Governing yourself solely by the rule of good seamanship for the safety of your vessel, with a wind of that kind blowing squally, say that the force or velocity of the wind is irregular, would you consider that forty fathoms of chain was sufficient?

A. Oh, yes, quite so.

Q. Would you think less than that sufficient?

A. You would be perfectly safe in making it thirty fathoms; that is, I am talking now of a modern ship furnished up to date, with the proper weight of anchor and equipment.

Q. Do you know what the equipment of the "Rickmers" was?

A. Only by what I have read.

Q. Would you say from what you know of the "Rickmers" that on a stormy night, with a storm and night coming on, the wind blowing from fifteen to seventeen miles an hour, that thirty fathoms would be sufficient with one anchor, Captain, to hold that kind of a ship, in ballast?

A. With a wind not stronger than seventeen or eighteen miles an hour, I would say, yes, that would hold it.

(Testimony of John McT. Panton.)

Mr. ASHTON.—We object to these questions as assuming a state of facts not in line with the facts existing at that time in the evening.

Q. If the wind increased, what would you do?

A. I would pay out more chain.

Q. As the weather became more stormy, you would pay out more chain?

A. Well, I don't know. I won't say that. If I had to pay out more chain, I would probably have to pay out more and not wait, because it is a bad plan to commence to give a ship chain more than once.

Q. If the storm increase, you think, Captain, then, you would pay out more chain?

A. Yes, sir; probably I would.

Q. And if you had that kind of a storm, and night coming on, and a falling barometer, and in the anticipation of a possible increase of the storm, you would pay out more chain? In the first place?

A. As long as the wind had not increased very much; but if the wind increased to say thirty miles an hour, and my anchor seemed to hold, I don't know but what I would have done it. You have to be governed, sir, by the place you are in, and the location, and what shelter you have got.

Q. Suppose when you paid out your forty fathoms of chain you put down your compressor in such a way that when the ship takes up the chain she snaps her compressor. Under such conditions as I have stated, what would you say would be the cause of that?

(Testimony of John McT. Panton.)

A. That would be a hard thing to say.

Q. Would you think the tackle was in good condition if it would not stand a strain like that, of such a ship?

A. I would not say it would not be in good condition, because such things happen at the very most unlooked-for moment. That has been my experience aboard ship.

Q. The compressor being properly built and tested, should have a capacity of enduring a strain greater than the cable on the anchor—the chain on the anchor?

A. It is supposed to be built strong enough to hold the chain if you wanted to use it.

Q. Would you attribute the breaking of the compressor under such circumstances to the deficiency of the compressor or the manner in which it was operated?

A. I should say—well, I would not say inefficiency of the block. I would say that the ship had a little way on her and put too much strain on her compressor block.

Q. And if that compressor was not fastened down at the proper time, that is, if they fastened it down while the ship had too much way of her to stand the strain?

A. I could not say. That would be one way of breaking it; or there could have been some flaw, I could not tell.

Q. But if the compressor had been in proper condition, and the anchor paid out and the compressor fastened down in the proper way, it would not be apt to

(Testimony of John McT. Panton.)

break with the wind blowing say in the neighborhood of fifteen to seventeen or twenty miles an hour?

A. No, sir, I don't think so.

Q. Ought not to break if it were blowing at that velocity? A. No, sir, it should not.

Q. Now, suppose—and I ask you all the time to keep out of your mind, anything that you have read or discussed about this case, but answer my questions just as if you never heard of the “Rickmers” or anything else, but what is in my question?

A. Yes, sir, certainly; I am doing that.

Q. Suppose that after the ship came to anchor and forty fathoms of chain paid out, and the compressor is made fast, and the compressor gives way and the ship runs out ten or fifteen fathoms of chain, and in the meantime, we will suppose that the ship drifts until it comes down upon or near another ship that is in the neighborhood of three-sixteenths of a mile distant. Could that happen without the chain parting, or the anchor dragging?

A. No, sir, I would say it would not.

Q. So that if the ship in question did drift from her position which she came to first—

A. (Interrupting.) The first anchorage, you mean?

Q. Yes—in the neighborhood of three-sixteenths of a mile, and down upon or near to another ship at anchorage, she must either have parted her chain or else have dragged her anchor? A. Yes, sir.

(Testimony of John McT. Panton.)

Q. Suppose in case she dragged her anchor without the parting of the chain, would that indicate that she had not scope of chain to hold her there with that velocity of wind and with her exposure by reason of being in ballast? A. No, sir.

Q. You think it would not indicate that?

A. No.

Q. What would it indicate, if it indicated anything?

A. I should think that the anchor had dragged.

Q. But, I say, if the chain had not parted, the anchor must have dragged? A. Yes.

Q. Would it be less likely to drag if more chain had been paid out? A. No, it would not.

Q. Why did you say awhile ago that if the wind was strong you would pay out more chain?

A. Exactly. I did say so, and I say so still.

Q. As a matter of fact the more chain there is out, the anchor is less likely to drag?

A. Yes, sir. A seaman never lets go of more chain than he is obliged to.

Q. If the ship in question dragged down on to another, a distance of three-sixteenths of a mile, and the tugboat which originally brought her to anchor overtook her and made fast to her and hauled her back to her original anchorage or further in, what would you do if you were master of the ship in question with the port anchor out?

(Testimony of John McT. Pantou.)

A. I would probably haul some of it up. You mean to say how would I handle my ship afterwards?

Q. With respect to the anchor in question?

A. I would probably hold off or paid out some more, and then probably towed ahead and let go my starboard anchor and paid out more of my chain.

Q. Would you have a tug tow you ahead **with your** anchor dragging?

A. Oh, no, no; certainly not.

Q. What would you do? Hoist your anchor?

A. Either hoist or pay out more chain and let go my second anchor.

Q. No, before you were towed back? What I want to get at is wouldn't you have hoisted your anchor before being towed back?

A. That would depend. If the anchor held, I would let the ship moor for the night. I would not hoist the anchor. I would tow ahead and let out my other anchor.

Q. But you would not want your first anchor on holding ground right up against another ship, would you?

A. Yes, sir. That would not make it any different as long as it was not the weather anchor.

Q. You would leave it out as a lee anchor?

A. Yes, sir; and then my ship would be to the wind. If the wind were coming from the west with the ship lying here, and the wind being due west, and both my

(Testimony of John McT. Panton.)

anchors down, that would be the best thing I want. One here and one here.

Q. Then your strain would be, as long as the wind kept in that direction, all on your other anchor?

A. On my weather anchor, yes, sir.

Q. And your ship would be riding entirely on your starboard anchor in that case?

A. Probably. That is, if the wind kept in the same direction.

Q. If it remained in a southerly direction, veering from southeast to southwest then the strain would be on your starboard anchor? A. Yes, sir.

Q. Now, Captain, if the distance you were towed back by the towboat, before putting out your starboard anchor was 1140 feet, wouldn't it be necessary to heave your port anchor? Would it be necessary to drag it?

A. Well, I don't know as you could drag it. I doubt if the towboat could tow the ship with it dragging.

Q. What I want to get at is would you hoist or drag the anchor?

A. Of course, you would have to heave it; yes, sir.

Q. Then if you were to be picked up under those circumstances the first thing you would have your crew do would be to hoist your anchor off the ground?

A. Yes, sir; if I had three-sixteenths of a mile to go I would. If I got the crown of the anchor off the bottom, I probably would not have it heaved up all the way.

Q. Don't you think it would have been wiser to have heaved it up altogether to see that it had not fouled on

(Testimony of John McT. Panton.)

anything or anything wrong with it, especially after a strain put upon it sufficient to break your compressor?

A. Probably I would pull it up; yes, sir.

Q. You could not be certain, when a strain had come upon it sufficient to break the compressor which itself ought to have been as strong as the anchor chain, that there would not be something wrong with the anchor or chain until you raised it and examined it?

A. Yes; might have been a turn of the chain around the stock of the anchor.

Q. And a strain sufficient to break the compressor might also have broken or at least cracked a link in the cable, in the chain.

A. Well, that is very improbable.

Q. Well, Captain, the compressor was or should have been stronger than any link in that chain?

A. Yes, sir.

Q. And a strain which parted the compressor, or broke the compressor, might at least impair the chain, mightn't it?

A. Oh, no; I wouldn't say that; I have seen a compressor break many times and the chain not touched.

Q. And you have seen the chain break without the compressor breaking?

A. I have seen the chain break right in top of the windlass, Mr. Hughes.

Q. Now, suppose, Captain, that the vessel was towed back under those circumstances without the chain being

(Testimony of John McT. Panton.)

taken in sufficient to lift the anchor off the ground; what would be the position of the port anchor? Would it be moored in the way you have described?

A. Yes, sir; it would probably be to the north'ard.

Q. And eastward of where the ship was riding, too?

A. Yes, sir; probably.

Q. It would be necessary for it to be in that direction? A. Yes, sir; if it were, it would be.

Q. If it were out in that way, the starboard anchor paid out and the ship riding from her starboard anchor she would be carried by her starboard anchor?

A. Yes, sir; certainly.

Q. Captain, in order to overcome the damage to the port ground tackle, caused by the breaking of the compressor, the ship put a tackle made by putting a band consisting of a four-and-a-half inch manila hawser around the chain—around the cable—and attaching a luff-tackle by means of a hook, say from an inch and a half to two inches in diameter into this band—

A. (Interrupting.) Strapped?

Q. (Continuing.) At the one end—

A. (Interrupting.) Strap is the proper term.

Q. (Continuing.) —and fastened, and the tackle made fast by a hook at the other end on a strap so-called around the foremast. I will ask you whether or not the capacity or strength of this tackle would be equal to the strength of the cable?

A. Oh, no; no.

(Testimony of John McT. Pantou.)

Mr. ASHTON.—We object to this line of examination as not cross-examination.

Q. In that case, the strain, whatever it was, that came on the port chain would be carried by the hook and this tackle? A. Not necessarily.

Q. Where else would it be?

A. By the windlass.

Q. How?

A. You have got your windlass. When you put tackle on like that it is to relieve the windlass.

Q. That is, to take the strain off the windlass?

A. Yes. If the ship is jumping any the rope will take—the rope will give and the chain will not give, and it takes the weight off the windlass; but I will say that the modern windlass is strong enough.

Q. If the windlass was broken, it would be necessary to take the strain off on this tackle?

A. Certainly.

Q. If the time of the breaking of the compressor, the windlass was unable to hold the chain, and the chain slipped out ten or fifteen fathoms, then whatever strain came on the port anchor would be taken by the tackle?

A. Yes, sir.

Q. And would fall on the hook made fast by the strap to the anchor?

A. What would be the size of the rope? You told me the size of the hook, but did not give the size of the rope.

Q. The rope I think—

(Testimony of John McT. Panton.)

A. (Interrupting.) Had a three and a half inch rope I think.

Q. I think in this case it is not given, but of necessity was at least as strong as the hook? A. Yes, sir.

Q. Now, I will ask you if the strain which finally came upon that hook was sufficient to straighten out the hook, do you think that that strain would be sufficient to part the chain unless it had been impaired at the time the compressor was broken?

A. No, I would not say it, in the first place, when the compressor was broken I don't believe that would break the chain, Mr. Hughes.

Q. Suppose the chain broke at the same time? The facts are that the compressor broke and the ship dragged when she first came to anchor, but afterwards she was towed back and the starboard anchor paid out to windward, and in towing her back, her port anchor was not hoisted off the ground? Assuming that to be the case, and that her port chain was made fast by a luff-tackle such as I have described, and that about ten o'clock that night the hook which attached this luff-tackle to the strap about the cable straightened out so that the luff-tackle ceased to be of any use, and at that or some time previous the anchor was lost, the chain had parted. When would you say it was most likely that the chain parted and the anchor was lost?

Mr. ASHTON.—We object to this as not cross-exam-

(Testimony of John McT. Panton.)

ination, and assuming hypotheses and conditions which are not justified from the record.

A. That is a pretty hard question to answer, Mr. Hughes.

Q. In other words, what I want to get at is, would the strain that straightened that hook be as likely to part the chain as the original strain which broke the compressor? At the time the compressor broke?

A. No.

Q. Would there exist sufficient strain, with the starboard anchor out, being the anchor to windward, to cause the chain to part if it was injured when the compressor broke? A. No.

Q. You can't account for any strain which would be sufficient, could you, as long as the starboard anchor out to windward?

A. No, I don't think so. I would put that down to an act of God.

Q. Or a defective link?

A. I have seen my chains—I have let go my anchor in a harbor and the chain give a jump and come down on top of the windlass and snap; and we would find the broken link, and it was just as good as ever.

Q. Now, if the vessel was dragging down for half a mile and toward another ship riding at anchor, she couldn't deviate her course by putting up her sails?

A. Not a big ship like that; no.

Q. Why would the size of the ship prevent her deviating her course?

(Testimony of John McT. Panton.)

A. No, sir; it was the storm, and they could not set these sails on the ship in the storm in that short a time unless there were sails up.

Q. Might have run up a fore staysail?

A. Might have.

Q. If you had a very high wind you could not put up much sail?

A. Yes, you could put up sail. Might put up the head staysail up.

Q. By putting up the head staysail, it would be likely to change his direction?

A. Very little with a big ship like that.

Q. Well, a very little would make quite a difference in width while traveling half a mile?

A. Oh, no; no, sir.

Q. Do you think the time would not be sufficient on board ship while she was dragging that distance to enable her to put up some sail?

A. No; because you see the men would all be working at the chains and anchors, and they don't as you know carry any too many men these days. Probably all told that ship hadn't twenty-five men on board, all told.

Q. What would they be doing with the chains and the anchors?

A. Probably paying out chain to stop the ship from dragging.

Q. How many men would it take to pay out chain on one anchor?

A. I have seen all hands get out.

(Testimony of John McT. Panton.)

Q. What I mean is how many men would it require?

A. That depends. If the ship is taking her chain all right, it would not require many men, but if she wasn't taking her chain, and you had to bring it out of the windlass, it would require all hands to bring it out of the windlass.

Q. Would it be possible to put up any sail? Would any sail stand in wind blowing sixty-five to seventy-five miles an hour?

A. Yes, sir; the storm sail would stand all right.

Q. Do you think any man could put it up to hold in a wind like that?

A. Yes, sir; I have seen men could get the head sail up in a very heavy gale.

Q. If your anchor were out and dragging on the ground, with a weight of say ninety fathoms of chain, or more, that would keep the head of the ship to the wind?

A. That is all it would do. The sail would be absolutely no use if the anchors were dragging.

(Testimony of witness closed.)

GEORGE N. SALISBURY, a witness on behalf of libelant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HUGHES.)

Q. Please state your name.

A. George N. Salisbury.

(Testimony of George N. Salisbury.)

Q. What official position, if any, do you hold, Mr. Salisbury?

A. I am the officer in charge of the United States Weather Bureau at Seattle.

Q. How long have you held that position?

A. For nine years I have been serving in that capacity.

Q. In this city? A. Yes, sir; for nine years.

Q. You occupied that position on the 25th of December, 1901? A. I did.

Q. What, in brief, are your duties in that position, Mr. Salisbury?

A. Keeping a record of the weather and the climatic conditions of the State of Washington, and collecting climatic statistics for the State of Washington.

Q. In what way do you ascertain and determine the weather conditions in this city?

A. There are several features which go to make up the weather: The temperature, and the direction of the wind, and the wind's velocity, and the rainfall; and for ascertaining the features of these elements, I have certain instruments.

Q. What instruments have you for ascertaining the velocity of the wind?

A. An instrument called the anemometer shows the velocity which the wind is moving past a given point.

Q. Does that record the velocity?

A. Yes, sir; that records the velocity in such a

(Testimony of George N. Salisbury.)

method that the number of miles per hour can be ascertained.

Q. Does it record it automatically?

A. Yes, sir; the record is an automatic record, and from it one ascertains the velocity.

Q. Is the instrument which you speak of the one in use on the 25th day of December, 1901, at your office in this city, or at the weather bureau?

A. There was one in use at that time.

Q. Was that instrument such an instrument and in such condition as to record correctly the velocity of the wind during the day and night of the 25th of December, 1901?

A. Yes, sir; the instrument exposed at that time was regarded as a reliable instrument, and was the official one, and had been tested and found correct.

Q. Where was that instrument located?

A. That is located on the roof of the building in this city known as the New York Building.

Q. Do you know what the height of that building is, or what the elevation of the anemometer is above the roof of the building?

A. The elevation above the roof at that time was twenty-two feet.

Q. Do you know what its elevation was above sea level at that time?

A. One hundred and twenty-one feet above ground.

Q. What was its elevation above any surrounding buildings lying to the southeast, south, or southwest?

(Testimony of George N. Salisbury.)

A. Was it obstructed, is that your question?

Q. Yes.

A. It was unobstructed.

Q. What records do you make and keep in your office of the velocity and direction of the winds?

A. There is an hourly record of the direction, and also there is an hourly record of the movement of the wind, the miles per hour for each previous hour; that is, from one hour to another.

Q. That is to say, at 12 o'clock midday, the records there recorded is the hourly record, would be the hourly record for the preceding hour, and so for every hour in your record? A. Yes, sir; that is what I mean.

Q. How is that made up?

A. That is made up from the automatic record.

Q. In what way?

A. It is tabulated at hourly intervals from the automatic record.

Q. On this tabulation, do you take for the hourly record, the average velocity as shown by the automatic record, or do you determine—for instance, your record shows at 4 o'clock P. M. of the 25th of December a stated velocity for the preceding hour. What does that represent?

A. That represents the movement of the wind for one hour, for the previous hour. That is, that means that the movement of the wind for one hour, for the previous hour, had been twenty miles, or twenty-four miles, or thirty

(Testimony of George N. Salisbury.)

miles, as the case may be, for the preceding hour, so much movement for one hour.

Q. Does this hourly record give you the maximum velocity at any instant of time, or any short interval of time?

A. That would not give the maximum velocity of any instant of time, but the average for the hour.

Q. Is it supposed to give the distance the wind traveled in one hour at the rate of speed at which it has passed over your anemometer?

A. Yes, sir.

Q. Can you, from the records in your office, give me the velocity of the winds at the city of Seattle on the afternoon and evening of the 25th of December, 1901, beginning at four o'clock P. M. of that day, and ending at twelve o'clock midnight; and if so, please do so?

A. I can give you the hourly movement at certain times on that day.

Q. Give me the hourly movements, please?

A. The hourly movement at what time?

Q. At four o'clock P. M.?

A. The hourly movement preceding four o'clock was seventeen miles—the next hour, do you say—was fifteen, the next sixteen, the next fourteen, the next seventeen, the next seventeen, the next was seventeen, the next twenty, the next twenty-four, and the next twenty-five.

Q. I wish in order that we can get that properly down I would like to have it by the hour?

A. All right. At four o'clock the hourly movement

(Testimony of George N. Salisbury.)

was seventeen miles for the preceding hour; at five o'clock for the preceding hour fifteen miles; six o'clock, sixteen miles; seven o'clock, the hourly movement was fourteen miles; eight o'clock, seventeen miles; nine o'clock, seventeen miles; at ten o'clock, seventeen miles; eleven o'clock, twenty miles; twelve o'clock, twenty-four miles per hour; one o'clock, twenty-five miles.

Q. Now, have you any data showing the maximum velocity or extreme velocities for any period of time during the hours you have mentioned?

A. Yes, sir; I have the exact velocity at five o'clock on the 25th, and I have the maximum or extreme velocity that occurred during the twelve hour period from five o'clock P. M. of the 25th to five o'clock A. M. of the 26th.

Q. Will you state what the maximum velocity was at five o'clock—is that maximum or extreme?

A. Maximum and extreme both.

Q. (Continuing.) Of the maximum or extreme velocities at five o'clock P. M. of the 25th of December, 1901?

A. Do you want it for five o'clock A. M. of the 26th?

Q. No, I don't care anything about that?

A. I find that I will be unable to answer that unless I had the right record. I find I have the wrong record. I can give you the maximum between five o'clock P. M. and from that on.

Q. If you are unable to give it, you may give the maximum and extreme velocities which occurred after five

(Testimony of George N. Salisbury.)

o'clock P. M. and up to twelve o'clock midnight on the 25th of December, 1901?

Mr. ASHTON.—I think we will object to it as incompetent, and not the best evidence.

A. I see recorded here a maximum velocity of thirty-two miles per hour from the southwest which occurred at 11:40 P. M. of the 25th.

Q. At that time, the wind was blowing from the southwest?

A. Yes, sir; from the southwest, at 11:40 P. M.

Q. What is the maximum velocity?

A. Well, that is the highest which occurred during the time, the highest wind which occurred during the whole time.

Q. Then between 4 o'clock P. M. and midnight of that day, was there any higher wind blowing at any time than thirty-two miles per hour?

A. There was none blowing, higher than that, at the point of observation.

Q. Mr. Salisbury, do you have the automatic or original record in duplicate, or keep the original in your office, for the hours I have mentioned, of December 25th, 1901?

A. The automatic record itself is not retained in the office. It is forwarded to the central office at Washington.

Q. And you do not keep a copy of a duplicate of it?

(Testimony of George N. Salisbury.)

A. No, sir, I do not keep a duplicate of it. Merely a tabulated statement.

Q. And your testimony is given from the tabulated statements which are made in your office?

A. Exactly.

Q. And these tabulated statements are taken from the automatic record?

A. The tabulations are made from the automatic record and are carefully verified both at the office here and at the chief office at Washington.

Q. Now, have you any record from which you can give me the directions of the wind during the period I have mentioned from four o'clock in the afternoon of the 25th of December, 1901, up to twelve o'clock midnight?

A. I can give you the hourly direction for that time, each hour.

Q. Please do so?

Mr. ASHTON.—I suppose my objections being that it is incompetent, and not the best evidence, can be urged to most any of these questions without continually repeating it?

Mr. HUGHES.—If you wish it, except, of course, I think you should point out to me when any new objection is urged, so that I might supply any deficiency if my attention were called to it.

Mr. ASHTON.—Well, perhaps, I had better make my objections to such questions as they come in.

(Testimony of George N. Salisbury.)

A. At four o'clock the direction was southeast; five o'clock, southwest; six o'clock, southeast; seven o'clock, south; eight o'clock, southeast; nine o'clock, southeast; ten o'clock, south; eleven o'clock, south; and twelve o'clock, southwest; and one o'clock, southeast.

Q. Now, what does this record represent? What does it show?

A. The direction of the wind at the hour; or its general direction, for the hour preceding.

A. It represents the direction of the wind at the hour.

Q. At the particular time the observation is made?

A. Yes, sir.

Q. Do you have any record for the observations for the periods intermediate between the hours?

A. No, sir; I have not.

Q. Do your records show any other facts than those to which you have testified respecting the velocity or the direction of the wind upon the date and at the hours mentioned?

A. There is a record which I have not with me, I left it at the office, which would give the direction and velocity of the wind at five o'clock P. M. on the 25th of December; I could get that by telephoning for it.

Mr. HUGHES.—Would you be willing to have him do that, instead of bringing it over here?

Mr. ASHTON.—Oh, yes.

(Testimony of George N. Salisbury.)

Cross-examination.

(By Mr. ASHTON.)

Q. You stated that the velocity of the wind was twenty-five miles per hour at one o'clock midnight, of the 25th and 26th of December, 1901. What was the velocity at two o'clock that night?

A. At two o'clock, the velocity was twenty-three miles.

Q. And at three o'clock?

A. Also twenty-three miles.

Q. And four o'clock? A. Eighteen miles.

Q. And five o'clock? A. Sixteen miles.

Q. Now, Mr. Salisbury, the New York Building is one of the highest buildings in the city of Seattle, isn't it?

A. About as high as any of them.

Q. And located upon one of the principal streets of Seattle?

A. It is located forty-five feet above sea-level.

Q. You mean the foundation of the block; the base of the building?

A. Yes, sir; the curbstone at the base of the building.

Q. The curb of the street is forty-five feet above sea level? A. Yes, sir.

Q. And how many miles is it, do you think, from West Point?

A. Well, I couldn't answer that. I have no knowledge of the distance.

Q. What would be your idea of the distance, simply

(Testimony of George N. Salisbury.)

for the Court, who might not be as familiar with the locations?

A. I have an idea that it is about six miles, but that is not accurate.

Q. You think that it is about six miles distant from Shilshoal Bay?

A. I am merely guessing at that. I have no accurate knowledge of the distance.

Q. Just one more question. I understand that the anemometer would record the velocity of the wind at the point in the air or the heavens where the anemometer is in operation? A. Yes, sir.

Q. And it would not record it at any other point in the atmosphere other than where the anemometer was located?

A. It would not record it, although it might give an idea of what it was.

Q. And you could not get a record at any other point other than where the anemometer is located?

A. Certainly not; it merely records that point.

Redirect Examination.

(By Mr. HUGHES.)

Q. Mr. Salisbury, please give the maximum velocity at five o'clock on that day that I have mentioned?

A. The maximum velocity on the 25th of December, 1901, was twenty-three miles per hour, from the south.

Q. Was that at the hour?

A. No, sir; that was the maximum up to the hour.

(Testimony of George N. Salisbury.)

Q. When did that maximum occur, can you tell?

A. The maximum occurred some time that afternoon, as near as I can tell.

Q. Do you know whether it was before four o'clock that it occurred?

A. I would be unable to tell that.

Q. You have given the direction of the wind at that hour? A. Yes, sir.

(Testimony of witness closed.)

And thereupon, the further hearing and taking of testimony herein was continued to January 23d, A. D. 1904, at 10 o'clock A. M.

At Office of Struve, Hughes & McMicken,
Seattle, Washington, January 23d, A. D. 1904, 10 A. M.
Present: E. C. HUGHES, for Libelant.

J. M. ASHTON, for Respondent and Claimant.

Continuation of proceedings pursuant to adjournment, per agreement, as follows, to wit:

H. H. MORRISON, a witness for and on behalf of respondent and claimant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ASHTON.)

Mr. ASHTON.—We will call Mr. Morrison my witness for the present?

(Testimony of H. H. Morrison.)

Mr. HUGHES.—Yes.

Q. (By Mr. ASHTON.) Were you the captain of the tug “Tacoma,” which towed the “Rickmers” into her anchorage at West Point on Christmas day, 1901?

A. Yes, sir.

Q. Were you duly licensed to pilot in the waters of Puget Sound at that time?

A. I carry a mate’s and pilot’s license.

Q. Had you a United States license as inspector?

A. I had.

Q. Was there anyone acting as pilot on the tug other than yourself at the time?

A. Had a licensed mate.

Q. Who was in command of the tug as captain and pilot at the time?

A. I was most of the time.

Q. Did you have any superior office as master of the tug? A. No, sir.

Q. Was there anyone on board the “Rickmers” who directed the movements of the tug?

A. Yes, sir.

Q. Who was there on board the “Rickmers” under whose orders or directions you were in the navigation of the tug? A. At what time do you mean?

Q. At the time you were towing the vessel from Port Townsend to Tacoma?

A. Towing it, I was in charge; but when we came to anchor, the captain of the ship was in charge.

(Testimony of H. H. Morrison.)

Q. What I am getting at, Captain, is, who was it determined to lay up at Smith's cove, or at Shilshoal Bay?

A. To anchor the ship?

Q. Yes, sir. A. I did.

Q. How was the wind at that time, Captain, if you remember? A. Southeast, and quite fresh.

Q. How was the wind on the way down from Port Townsend? In the same quarter?

A. In the same quarter, southeast, all the way up.

Q. When you determined to lay up at Shilshoal Bay, did you make an expression of that determination to your tow, to the "Rickmers"?

A. Didn't need to. Anyone could see it was blowing too hard coming up and freshening up.

Q. What I mean is: Did you signal the "Rickmers" that you were going in?

A. Yes, sir; I signaled them to get their anchor ready, and haul in his port braces.

Q. How far were you off West Point at that time?

A. Do you mean the time I turned in?

Q. Yes, sir, at the time you left off the regular course to Tacoma, how far off the point?

A. Probably two and a half or three miles, about northwest from the point.

Mr. ASHTON.—That is all that I care to ask Captain Morrison, Mr. Hughes.

(Testimony of H. H. Morrison.)

Cross-examination.

(By Mr. HUGHES.)

Mr. HUGHES.—I want to make Captain Morrison my own witness. There is no cross-examination of the Captain as your witness.

Mr. ASHTON.—Then, in fairness, to you, Mr. Hughes, you should, of course, know that I am through with my case and I had better say so here. Of course if there is any little thing hereafter—

Mr. HUGHES.—You may make your note that you rest your case and that any little matter of correction or anything like that may be put in later.

Mr. ASHTON.—I am not pleased with the drawing of the compressor block; I don't like the drawing. I may want to get a better drawing, but I don't believe I will, because I don't see how I can.

Mr. HUGHES.—I think that shows the idea. There is no cross-examination of Captain Morrison.

Mr. ASHTON.—That is the case for the respondent and claimant.

Mr. HUGHES.—Let the record show that Captain Morrison is now called as our witness.

Direct Examination.

(By Mr. HUGHES.)

Q. Captain Morrison, have you testified that you

(Testimony of H. H. Morrison.)

were the master of the tug "Tacoma" which towed the "Robert Rickmers" to her berth in Shilshoal Bay on the afternoon of December 25th, 1901?

A. Yes, sir.

Q. Why was she taken to that place?

A. The weather looked bad; in fact it was blowing too hard to make it safe to go through.

Q. Where was she destined? A. Tacoma.

Q. At what time did you go in there to Shilshoal Bay?

A. Well, between three and four o'clock.

Q. Describe what occurred there when you first came in, and what situation you found?

A. I went into Shilshoal Bay and found three vessels loading, and when he got his anchor out, I took her up ahead and a little to one side of the "Corona," to get in the best berth I knew, and he let go with his anchor, and seemed to be pleased with the berth; and she dragged.

Q. Which anchor did she let go?

A. The port anchor.

Q. Do you know how much chain he payed out at that time? A. I do not.

Q. Did not advise you, did he? A. No, sir.

Q. I will ask you to state what that situation is, whether it is a good anchorage there?

A. It has been a harbor ever since I have been tug

(Testimony of H. H. Morrison.)

boating. Ships have been riding there ever since I can remember.

Q. How long have you been a master of tugboats?

A. Fourteen years, going on fifteen.

Mr. ASHTON.—We will object to this; not the best evidence.

Q. Have you frequently anchored sailing vessels there before? A. Yes, sir.

Q. You are familiar with the anchorage in Shilshoal Bay? A. I am.

Q. And in the different portions of Shilshoal Bay?

A. I have sounded it all over a dozen times.

Q. What is your opinion as to whether the berth to which you took the "Rickmers" was or was not a good safe berth, considering the weather, the character of the weather, and the character of the wind, and all other circumstances, including the location of the other ships?

Mr. ASHTON.—We object to that as irrelevant in this action at this time.

A. Well, I consider it the best berth which was vacant at that time.

Q. What do you say as to whether it was a safe berth, in your judgment?

A. I considered it a safe berth.

Q. Now, you stated that he had put out his port anchor which dragged? A. Yes, sir.

Q. It appears from the testimony in this case that

(Testimony of H. H. Morrison.)

after putting out the port anchor, when the ship took up the strain, or it took up the slack in the chain so the strain came on his riding chock, or what is called his compressor, which held the chain and took the strain from the windlass broke. Did you ever learn of that fact before?

A. Not until the next day after she broke. They told me that the compressor, that is the riding chock, carried away.

Q. Now, you have stated that the ship dragged her anchor. Tell what occurred and where it dragged to?

A. He dragged back near abreast of the "Corona," near the "Corona," dragged by her, and then I went alongside and gave him the hawser and told him to hoist his anchor, and I would go ahead and tow him back and he could use both anchors.

Q. Before going further, I want you to state what distance he was from the "Corona," when he first put out his anchor and you gave him the berth. About what distance was he from the "Corona"?

A. Well, I should judge from a quarter to three-sixteenths of a mile; a good safe berth; what I would consider a good safe berth.

Q. Then would you say that she dragged in the neighborhood of three-sixteenths of a mile?

A. Well, she dragged back abreast of the "Corona," yes, sir.

(Testimony of H. H. Morrison.)

Q. What reason, if any, was there for your not overtaking her sooner and taking hold of her?

A. We had got our hawser in.

Q. They had cast off your hawser?

A. Yes, sir.

Q. And you had to get that in so as to prevent its fouling before you went back there?

A. Yes, sir.

Q. And you went back as soon as you could?

Mr. ASHTON.—We object as leading.

A. I went back and first attempted to put the hawser—in our parlance, put the line on him; and was probably ten minutes clearing properly from where we had the line on him. Then I turned around and put the hawser on him and took him up ahead to a good safe berth while he was backing his anchor.

Q. Where did you take him the second time with reference to the place where he put out his first anchor?

A. A little further ahead from where I first anchored him.

Q. A little further inshore, do you mean? Or a little further west—or north?

A. About the same soundings we had; twelve fathoms.

Q. You were ahead of course?

A. We were ahead on a short hawser.

Q. In your opinion were you more nearly ahead of

(Testimony of H. H. Morrison.)

the "Mildred"—more nearly inshore from the "Mildred," or more nearly inshore from the "Corona"?

A. He was about midway between or half way between the two, so in case he dragged he would go between them.

Q. And in anchoring him in that position, I will ask you whether you anchored him on a line with them, or neared inshore, further inshore?

Mr. ASHTON.—We will object as leading.

A. Well, he was a little off shore from the "Corona," and a little inshore from the "Mildred."

Q. That was at the time he was taken back to his second anchorage? A. Yes, sir.

Q. Here is a diagram which is marked Respondent's and Claimant's Exhibit No. 12. On this diagram, down here, is the letter "S"?

A. Yes, sir; I see it there.

Q. On this diagram is given the location of the different vessels as shown you by some of the witnesses for the claimant and respondent, and also some of the witnesses for the libellant, as being the approximate location of the four ships after the "Rickmers" came to her second anchorage. The letter "S" represents the location of the schooner "Stimson"; the letter "C"—or rather, the cross at the letter "S"—represents the location of the "Stimson"; the cross at the letter "C" represents the location of the "Corona"; the cross at the

(Testimony of H. H. Morrison.)

letter "M" represents the location of the "Mildred," and the cross at the letter "R" represents the location of the "Rickmers." What do you say as to the approximate correctness of those locations, and to what extent would you differ?

Mr. ASHTON.—We object as incompetent.

A. Well, it is nearly correct. I did not take any bearings, I simply gauged my distances from the ships; but I would say it is nearly correct. If anything he was out a little bit more so as to clear the "Corona."

Q. That is, if anything, your idea would be that the "Corona" would be a little nearer inshore relatively?

A. Yes, sir.

Q. And he a little bit more out?

A. Yes, sir.

Q. And the distance between them at the time they took their second anchorage was about what, between those ships?

A. Well, what you call a good safe anchorage; between a quarter and a half a mile, so as to give him plenty of room to drift and swing.

Q. Now, when you hauled them up the second time, before picking him up did you tell him anything about taking up his anchor?

A. No, sir. We had the men at the windlass and began to heave. He hove in some chain.

Q. You didn't know how much chain?

A. I did not.

(Testimony of H. H. Morrison.)

Q. Did he give you any information as to any damage done to his right chock, or his compressor, or his windlass at that time? A. No, sir.

Q. You saw the men at work taking in the chain?

A. Yes, sir.

Q. About how long were you beside him while they were at work before you commenced towing him?

A. We started to tow at once, as soon as we got the man at the wheel we went ahead and hauled him up.

Q. About how long was it—?

A. (Interrupting.) We were probably towing him half an hour.

Q. (Continuing.) Before you started?

A. I have forgotten now. Ten or fifteen minutes alongside, yes, probably fifteen minutes coiling that hawser and putting it out again.

Q. Now, how long were you towing forward and holding him until he made fast and let go your hawser?

A. I don't know; I never looked at the time. Probably twenty minutes or half an hour.

Q. What, if anything, was said by either of you before letting go the last time?

A. When we got him in the right place, the mate said to hold on and he slacked his port anchor, and wanted me to tow her bow while he let go the starboard anchor which I did.

Q. He slacked on the port anchor?

A. He slacked out chain; yes, sir.

(Testimony of H. H. Morrison.)

Q. And told you to hold him?

A. Told me to swing her bow out so as he could sweat her and let go the starboard anchor.

Q. Which way did you swing her bow?

A. Up to the northwest and west.

Q. And he let go his starboard anchor? Did you instruct him to let go?

A. No, sir, he gave his own orders.

Q. Did either the mate or the captain say anything to you in regard to their berth, or whether they had sufficient clearance from the other ships?

A. Yes, sir.

Mr. ASHTON.—We object; immaterial. Also as incompetent and irrelevant.

Q. What, if you know, did they say?

A. After the hawser was cast off and I got my hawser in, I went alongside the ship and had a talk with the captain.

Q. You mean after you got your hawser in after the second anchorage?

A. Yes, after we got him anchored the second time, I went alongside, and I says, "Are you all right Captain?" and he says, "Yes, I am in a good berth," and I told him that when I went in I would send a tug out the next morning to take him up the Sound, and he said he was well pleased with the berth.

Q. Did either of them ask for any information as to

(Testimony of H. H. Morrison.)

the amount of chain which should be paid out, or did you give them any? A. No, sir.

Mr. ASHTON.—We object as leading.

Q. Do you know what amount of chain was paid out after they hoisted it? A. No, sir.

Q. Was you able to see whether they hove in their port anchor so they could see it, or took it in so it was off the ground?

A. It was quite dark at the time, and I could not say.

Q. If as a matter of fact they did not heave in more than the scope of chain they had out—had run out before the breaking of the compressor or the right chock, and did not lift their anchor off the ground, I ask you if you knew of that fact at the time, or at all until now?

Mr. ASHTON.—We object to the question as argumentative and leading.

Q. Only the simple fact whether you had knowledge of it at the time? A. I had no knowledge of it.

Q. What did you do after that?

A. I came to Seattle and reported the matter to the manager.

Q. And then what?

A. Well, he said he would give them a stronger tug; and when the wind let up they would attend to it; and I left and went to Port Townsend for another ship.

Q. What kind of a ship was the "Rickmers"?

A. She was an iron and steel four-masted ship, a little

(Testimony of H. H. Morrison.)

over two thousand tons; some calls them a four-masted bark.

Q. She was in ballast, was she?

A. Yes, sir; she was in ballast.

Q. On your way to Port Townsend, did you see her?

A. No, sir, I saw the lights as I passed is all.

Q. The next day did you see her again?

A. Yes, sir; a telephone report along towards morning. At that time the wind was strong nor'west at Port Townsend. They reported a four-masted ship sending up rockets in distress; and the nearest description I could get it was between Seattle and Muckilteo; between Smith's Cove and Muckilteo, was the nearest I could get of any description; and the wind was west off, and then I went and telephoned our agent to send something up and see what it was, and they went up and discovered the "Rickmers" and the "Stimson" ashore near Richmond Beach; and we went there and the tide was in, and we towed him up and got him back to Salmon Bay.

Q. Did you have any conversation with the master or the mate or any officers afterwards?

A. Oh, yes, sir; I was aboard the ship at the time I was alongside of the ship.

Q. What conversation did you have?

A. We had quite a conversation about different things. He told me about getting away and parting their chain.

Mr. ASHTON.—We object to any conversation hap-

(Testimony of H. H. Morrison.)

pened at that time being introduced on defendant's side such case at this time.

Mr. HUGHES.—You are overlooking the fact that I simply offer it as explanatory of their conversation with these men, our statement of it, so that you may understand, which makes this necessary. They testified as to the conversation with Captain Morrison, and that is the only reason I am offering this, that I am asking these questions. I do not consider it of any special importance to me, but I thought it might be best not to overlook the fact in my testimony.

Mr. ASHTON.—Of course, at this late day after the captain and officers of the "Rickmers" have gone probably to the other side of the earth; no one knows where they are.

Mr. HUGHES.—If you will read their testimony, then you will see that they testified to it.

Mr. ASHTON.—And there is no opportunity to show anything different from what Captain Morrison may say about it, in case we wish to.

Mr. HUGHES.—My purpose is simply to show what they said because they gave the testimony.

Q. Well, at that time, go on and state what, if anything was said about the events of the night before? And about what you saw?

A. Well, I saw everything in confusion aboard the ship. She had struck the schooner about full and mashed

(Testimony of H. H. Morrison.)

in her port bow and starboard quarter, that is the bulwarks; and I asked the mate how it happened, and he explained that the windlass was defective, and when she fetched up with a run, she carried away, and she only had the starboard anchor left, and she went away. He said that the windlass was defective whenever they left the port she came from, Shanghai, or whatever it was.

Q. Did you see the damage which was done to her riding chock?

A. Everything was in a mess; there was old iron and mashed up wood, and they had broken tackles and everything on deck broken tackles and broken lines; there was a mass of confusion on deck.

Cross-examination.

(By Mr. ASHTON.)

Q. The wind must have been blowing pretty hard when you took her in there? A. Yes, sir.

Q. What velocity do you think it had?

A. I could not judge; it was a little too strong for us to tow the ship.

Q. The "Tacoma" is a pretty powerful tug, isn't she?

A. She is a good average tug, yes, sir.

Q. How was the wind when you reported to the manager what you had done? A. Southeast.

Q. Well, I mean how did it compare in velocity?

A. I should judge about the same as when I anchored her.

(Testimony of H. H. Morrison.)

Q. Had you any appliances or means aboard the "Tacoma" for recording the velocity of the wind?

A. No, sir.

Q. What kind of weather did you have that night in the way of velocity of the wind in going from Seattle to Port Townsend?

A. Well, we had it southeast as far as No Point.

Q. And how was the wind?

A. About the same as when we anchored; it may have been possibly at times stronger.

Q. Was it blowing in gusts, or was it a steady blow?

A. It was squally at times, but nothing bad; a good strong wind, pretty near coming from the southwest.

Q. Did she shift at all?

A. It shifted after we got to Port Townsend. I don't know what it done here.

Q. Did she shift temporarily, or did these gusts seem to be from the same quarter?

A. They were.

Q. What did you go back to Port Townsend for?

A. To tow the ship "Trimtram" from Port Townsend to Everett.

Q. Where was the "Tyee"?

A. In Seattle Bay, waiting for the wind to moderate.

Q. Had the tug in Seattle?

A. When I left.

Q. Waiting for the wind to go down?

A. Yes, sir.

Q. Was the wind so severe that the "Tyee" could not stand to leave the Seattle Dock?

(Testimony of H. H. Morrison.)

A. She could stand it, but we couldn't tow anything; and the ship was in better condition than if she was under way, and especially in getting under way in the night. The "Trimtram" was a much smaller ship, and the "Tyee" was a much stronger tug than the "Tacoma," so they made the change.

Q. How much did the wind decrease in your judgment from the time you took the "Rickmers" into Shilshoal Bay say down to the time that you reported to the manager at Seattle?

A. I don't think it decreased a particle.

Q. What time was it when you reported to the manager, what time of night?

A. I presume about six or seven o'clock, or such a matter, as near as I can tell.

Q. How much did the wind decrease from six o'clock, down to the time you arrived in Port Townsend?

A. When we arrived in Port Townsend, it was blowing hard; it always blows hard in Port Townsend; that is what has been my experience.

Q. Do I understand you to say that the wind had increased?

A. As we got towards the Straits, it did. I don't know what it done here; and then it suddenly hauled to the westward.

Q. What time did you arrive in Port Townsend that night?

A. Between eleven and twelve o'clock.

(Testimony of H. H. Morrison.)

Q. Did you tow the other ship that you mentioned that night?

A. No, sir; he had no steam to get his chain up, and the captain did not want to get under way, said he didn't want to go until morning.

Q. Well, the condition of the weather I suppose had something to do with the captain's decision, and probably your own, Captain, as to taking her to Everett that night.

A. I thought myself she was safer at anchor than under way.

Q. It was better tugging over the next day?

A. It was better, yes, sir.

Q. Do you know whether or not the windlass of the "Rickmers" was used in letting go the port anchor when you first took her in there?

A. The windlass had to be used.

Q. You could hear it. Couldn't you hear the windlass winding in?

A. I could hear the chain go out. I had no way of seeing the windlass, or knowing what they were doing. They may have been paying it out from the deck.

Q. Wouldn't they have had to use the windlass to pay it out?

A. Oh, no; not necessarily; they could arrange the chain on deck.

Q. It would be pretty dangerous proceedings to let go of an anchor without using a windlass?

(Testimony of H. H. Morrison.)

A. Oh, you might have an old-fashioned windlass, one you always had to let go with a run.

Q. What did they use to pull in the part of the port anchor cable which was partly in?

A. Had a capstan and windlass, and they used a hand-bar. I could see the men heaving on the capstan.

Q. Did you see them using the capstan?

A. I saw them walking around the forecastle head.

Q. Did you see them with the hand-bar? Did you see them with hand-bars on the capstan walking around it?

A. I did.

Q. Will you testify positively that they did not use the windlass in hauling that cable?

A. No, I don't know what they used. I could see them walking around and saw the chain coming in.

Q. But you don't know whether the windlass was in use or not in hauling in the cable?

A. No. The supposition is that it was.

Q. You knew, didn't you, when you left Townsend, that the "Rickmers" had never been in here before and was a stranger to these waters?

A. No, sir, I did not.

Q. Who engaged you to tow the ship?

A. The captain of the ship—I took him to be the captain. I was talking to someone on the bark.

Q. Do you remember what he paid you?

A. He said he would give us seven hundred and twenty dollars to tow him to "Tacoma" and back to sea.

(Testimony of H. H. Morrison.)

Q. To do what?

A. To take him from where he was between Angeles and Dungeness to Tacoma and back to sea twenty miles off shore.

Q. Was it in writing?

A. No, sir; it was too rough to go alongside the ship.

Q. Now, Captain, you would not undertake at this late date to give the exact distance that the "Rickmers" was from the "Corona" when you first left her?

A. Not the exact distance, no; not to a foot or a fathom.

Q. And you would not undertake to fix the distance the "Corona" and the "Mildred" were apart?

A. No; no more than that they were a good safe distance apart.

Q. You simply speak from your recollection of your observation at the time? A. Yes, sir.

Q. Were you pretty busy with your tug that night? Did you have much work, have many orders on hand?

A. I don't know of many orders. I only had one order, was to go and take that ship out.

Q. From Port Townsend to Everett?

A. Port Townsend to Everett, and then come to Seattle.

Q. When did you get that order? Before or after you took the "Rickmers" in tow?

A. After, when I turned in, they turned or changed

(Testimony of H. H. Morrison.)

the tugs, and told me that they would have the "Tyee" take the "Rickmers" and me go and take the "Trimtram."

Q. That was a pretty bad night all around for a ship on the Sound?

A. Oh, I don't know. I have seen lots just as bad.

Q. Isn't that the night that the "Sir Robert Forney" went ashore in Tacoma harbor?

A. I don't know.

Q. What was the name of the mate that you talked to who told you that the windlass was defective when they left Shanghai? A. I don't know.

Q. How many mates were on the ship, if you know?

A. Only one I was talking to that I was sure of being a mate.

Q. Who was he, the first or second mate?

A. The first mate.

Q. How did you know that to be so?

A. He was performing the duties of mate. He took charge, and done all the work. I took him to be the mate. I didn't ask him for his office or position.

Q. He might have been the second mate?

A. Not that day. All hands were on deck.

Q. And you don't know how many mates were on that ship?

A. I didn't ask them; I presume there were three.

Q. And you don't know whether he was the second or third mate except from what you saw him doing?

A. He had charge of the deck and was doing the duties of a first mate.

(Testimony of H. H. Morrison.)

Q. And was this your only reason for believing he was first mate?

A. I asked him if he was mate and he said he was.

Q. What reason did you have for asking him if he was mate? He was talking to you? Why did you want to know his authority?

A. Because we generally go aboard and have a talk with the Captain and mate; we don't generally want to talk to the cook. We want to know who we are talking to.

Q. Did you have any particular business with the mate at this time to talk about?

A. Nothing any more than we often go aboard and ask how things are, and how long before they will have the chain in, or something of that kind.

Q. Now, as a master mariner, and with your experience as a captain, if you went aboard a ship to find out her condition, you would naturally talk to the captain, wouldn't you?

A. I had a talk with the captain at the same time.

Q. And the mate came right up and put in voluntarily this information about the windlass?

A. No, sir, he didn't. I wormed it out of him after I got aboard ship.

Q. You tried to worm something out of the mate and captain?

A. No more than I found out about different things.

(Testimony of H. H. Morrison.)

Q. Why were you interested about it? Why were you concerned in trying to worm something out of them?

A. We were to try to get the ship to Tacoma as soon as we could and with as little rumpus as possible, and we had two on board, and the fellow who is alongside ship generally looks after them, and I happened to be that fellow.

Q. You really had charge of the whole business of getting that tug to Tacoma?

A. No, sir, I was helping them out all I could. The "Tyee" had charge.

Q. Now, Captain, you say that the ship dragged three-sixteenths of a mile when she first dragged after you had anchored her. Now, how do you arrive at that distance. Anything more than optical observation?

A. Just observation and practice. I supposed he was in a safe berth.

Q. Observation with your eye, of course.

A. Yes, sir.

Q. How far was she from the north shore of West Point spit there when you first anchored her?

A. She was in twelve fathoms of water as we had. I don't know the ship's distance. We were in twelve.

Q. And she was in twelve?

A. We were in twelve; and it may have been deeper where she was; she was lagging out.

Q. She was out to the length of your hawser to the northward?

(Testimony of H. H. Morrison.)

A. Trailing along the beach, yes, sir.

Q. Were there any other tugs in Shilshoal Bay that evening that you saw?

A. I don't remember of any other tugs being in there.

Q. Did you see any other vessels other than the "Corona," the "Mildred" and the "Stimson"?

A. Nothing I took any notice of.

Q. Were there any other tugs there belonging to the company you were connected with at Seattle that night other than the "Tyee"?

A. Not that I know of.

Q. How far was it, from the "Corona," in your judgment to the shore, that is, to the shore of Shilshoal Bay in a due easterly direction? (Witness examines map marked Respondent's Exhibit 12.) Well, say from the ship to the shore?

A. I would say that in a due easterly direction passing through and in an easterly direction bring it about there (indicating).

Q. About how far would that be?

A. I don't know without a divider, I wouldn't want to guess at it. If that is in a direct easterly course, it would bring it about here, it would be three-sixteenths of a mile provided that diagram is correct.

Q. Anything more than that?

A. That is, in to the shore I would say that is about the correct length of the line.

Q. That would be only half a mile off?

A. Yes, sir, according to that, that is correct.

(Testimony of witness closed.)

B. B. WHITNEY, a witness for and on behalf of libelant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HUGHES).

Q. Captain Whitney, what official position do you hold at the present time?

A. Inspector of hulls.

Q. Are you a master mariner?

A. Yes, sir; I have been.

Q. How long have you been a master mariner?

A. I don't know just when I did first go as master. About ten years, I think, before I went into this position.

Mr. ASHTON.—I want to ask Captain Morrison one more question.

Mr. HUGHES.—Certainly.

Mr. ASHTON.—Captain Morrison, when did you first hear that you would be wanted as a witness in this case?

Mr. MORRISON.—I think about two weeks ago.

Mr. ASHTON.—Is that the first time that you knew that this matter was coming up in court?

Mr. MORRISON.—Yes, sir.

Mr. ASHTON.—That is all. Thank you.

(Direct examination of Captain Whitney resumed.)

(Testimony of B. B. Whitney.)

Q. Now, Captain Whitney, what experience had you had in the handling and anchoring of sailing vessels? Just briefly.

Mr. ASHTON.—I will admit, in order to save the time, that Captain Whitney is a competent and experienced master mariner.

Q. Captain, are you acquainted with Shilshoal Bay, and the character of that bay as a harbor?

A. Why, yes, I think I am. I have laid there for shelter for a good many times.

Q. What do you think of its general character for a harbor in southerly winds and storms?

A. I consider it a pretty good harbor. I have laid there for shelter with logs and they have to be taken care of pretty well.

Q. I wish you would examine this diagram which is marked Claimant's Exhibit No. 12. Now, as appears upon this diagram, on the night of December 25th, 1901, the afternoon and evening of December 25th, 1901, the following vessels were at anchor in Shilshoal Bay, the "Stimson" approximately at the point or cross at the letter "S," the "Corona" approximately at the point indicated by the cross at the letter "C," the "Mildred" at the point indicated by the cross at the letter "M," and the "Rickmers" at the point indicated by the cross at the letter "R." The distance according to this chart of the respective locations would be between the "Rick-

(Testimony of B. B. Whitney.)

mers" and the "Corona" about three-sixteenths of a mile, and between the "Rickmers" and the "Mildred" about three-sixteenths of a mile, with southerly wind blowing at from fifteen to thirty miles an hour or upwards. Would you say that is a suitable and proper berth for the "Rickmers"?

Mr. ASHTON.—We object to this, as irrelevant, and also incompetent; as this is not a case with or against the Puget Sound Tugboat Company.

Mr. HUGHES.—I am offering this in answer to your testimony and not otherwise.

A. Why, eleven hundred feet ought to be berth enough for a ship. How long was this "Rickmers"?

Q. Two hundred and sixty-seven feet?

A. How much cable did she have, all told?

Mr. ASHTON.—All told, one hundred and thirty-five fathoms.

A. Yes, sir; eleven hundred feet is far enough.

Q. Captain Whitney, assuming that the "Rickmers" when first brought to anchor put out her port anchor with forty to forty-five fathoms of chain, that when she fetched up on her chain, she split her riding chock, or what has been spoken of in the testimony as her compressor, which held when made fast held the chain, and that from ten to fifteen fathoms of her chain ran out, and then she dragged from a point approximately represented by the cross at the letter "R" to the "Corona," and that the tug which anchored her then overhauled

(Testimony of B. B. Whitney.)

her and made fast and towed her back to that anchorage; what should the "Rickmers" have done with her port anchor before being towed back?

Mr. ASHTON.—We object to that as being incompetent, irrelevant and immaterial.

A. I don't hardly understand what went wrong with the windlass; you say the riding chock or the compressor; mariner's term as the compressor is the band which clamps the wildcat through which the chain runs, and the right chock is another chock out close to the hawse pipe which is a sort of a clapper arrangement or weight which comes down and pinches the chain.

Q. This device was an appliance to fasten upon one of the links of the chain, and hold the chain so as to take the entire strain and is represented by the drawing shown upon exhibit No. 5?

A. That drawing indicates a chock that is placed closed up to the hawse pipe to take the weight of the chain, or a part of the weight of the chain; but the marine usage is that the compressor is always a hand which runs around the wildcat that the wildcat travels on the ship windlass the chain drop into slots arranged for them, and the compressor is a lever upon the top of the forecastle head which takes that band and stops the wildcat from traveling until it can be locked to the windlass.

Q. In this case, if the anchor dragged after this accident to the right hand chock or whatever device it

(Testimony of B. B. Whitney.)

was which held the chain so that the ship traveled a distance of approximately three-sixteenths of a mile down to the "Corona" before she was hauled back and came again to anchor, would you say it was good seamanship for the "Rickmers" not to raise her anchor and inspect it, or raise it far enough to see that the chain was not fouled with it, or that there was nothing the matter with it?

A. I would have sighted it myself if it had been a case where I had anything to do with it; I would have sighted the anchor.

Q. Would it be good seamanship not to take up any more of the chain than ten or fifteen fathoms that had run out; in other words, to leave out forty fathoms of chain while she was being hauled back over a depth of water not over twelve to sixteen fathoms.

Mr. ASHTON.—We object to that as leading.

Q. So that her anchor was dragging while she was being taken back by the tug?

A. Well, they may not have been able to have gotten the anchor while she was being towed back if they had a hand windlass that worked slow; but after she had been anchored I think they should have sighted their other anchor to see if it was clear or had it in the ship to let go when they wanted it, if they should want it.

Q. Now, in coming back to anchor again, after they had towed or dragged that forty or forty-five fathoms of chain, would it have been good seamanship to put

(Testimony of B. B. Whitney.)

out the starboard anchor with thirty fathoms of chain without hoisting the port anchor under the circumstances I have described and sighting it to see it was not foul, and in proper position for which the ship could ride? A. I hardly think so.

Q. Let me ask you: If they had not hoisted the anchor, and if they had not taken in more than the ten or fifteen fathoms of chain after it ran out so that at all times there remained out the original forty fathoms of chain with which the ship had dragged while coming back that distance of three-sixteenths of a mile to the second berth, and had payed out the starboard anchor, how would the ship be moored with reference to the port anchor; what would be the position of the port anchor?

A. What do you mean? When she first anchored, or afterwards?

Q. When she anchored the second time?

A. When she was finally anchored the second time?

Q. When she was finally anchored the second time, yes?

A. Well, with thirty fathoms of chain on the second or the starboard anchor?

Q. Yes, sir; with thirty fathoms of chain on the second or the starboard anchor?

A. The chain on the port anchor would have tended aft a little, because in fourteen fathoms of water she would sag back with thirty fathoms of chain, she would

(Testimony of B. B. Whitney.)

go back some but not far enough to reach the first anchor which she had left to drag—it must have tended aft a little; the tend of the chain must have been aft.

Q. Towards the stern of the ship somewhat?

A. Yes, sir; aft.

Q. I will ask you if she was left that way, on which anchor would the ship ride?

A. She would ride on the starboard anchor unless there was a shift of the wind in the opposite direction, or very nearly the opposite direction.

Q. Under those circumstances, with the wind blowing at say from fifteen to twenty-three, twenty-four or twenty-five miles an hour, would you say that thirty fathoms of chain on the starboard anchor and a depth of thirteen or fourteen fathoms of water would be sufficient?

A. Well, that would depend altogether on the weights of the anchors.

Q. With an anchor of thirty-eight hundred weight and stock of seven or eight hundred weight?

A. How many tons was this ship?

Q. Two thousand one hundred and seventy-four tons, I think, net register, in ballast?

A. Are you sure you have the weight of the anchor right? You have given me a very light weight for the anchor, and I doubt if you are right in that.

Q. I will look to be positive.

(Testimony of B. B. Whitney.)

Mr. ASHTON.—Five thousand one hundred and forty-four.

A. It must be heavier than that, than thirty-eight hundred because that is altogether too light for a ship of that size. That would be all right for one of these coasting brigantines.

Mr. ASHTON.—The starboard anchor and stock is 5124.

Q. I show you, Captain, Claimant's Exhibit No. 4, that being the survey in respect to these anchors, and ask you to state from that survey what is the weight of the anchor and stock, as shown upon that exhibit?

A. Thirty-eight hundred weight for the anchor, exclusive of the stock, and the weight of the iron stock is seven hundred weight and three-quarters, I think; there is no space there, but I presume that is what it is.

Q. The three is under the quarter?

A. That is forty-five hundred and three-quarters; forty-five hundred weight and three-quarters. But that is English hundred weights, which are one hundred and twelve and one-half pounds to the hundred weight, that would add about eight per cent, I think.

Q. It adds twelve and a half pounds per hundred weight? A. Yes, sir.

Mr. ASHTON.—That would make 5124.

Q. I am talking about the English hundred weights?

A. I don't know. Of course, I couldn't tell you off-

(Testimony of B. B. Whitney.)

hand what Lloyd's requirements are, but that seems to me a pretty light anchor for a ship of that size, and on some ships the ground tackle is a great deal heavier than is required, and it all depends; if a ship has heavy ground tackle, they don't have so much chain as ships who are up to the requirements or a little under.

Q. Would you say under the circumstances I have described, in view of the weather as described and the situation as shown upon this Exhibit No. 12, would you say that was sufficient scope of chain to pay out under the circumstances stated?

A. No. If they dragged that forty-five fathoms of chain on one anchor, when he anchored the second time he would give more range of chain of course.

Q. Now, as the wind increased, what would good seamanship require?

A. Well, all you can do is to give more chain; that is all you have to hold with. But, now, don't misunderstand me. I wouldn't have given more chain without knowing whether that anchor—I would have sighted that anchor, and had it cat-headed, and then I would have given more chain, probably fifteen or twenty or twenty-five fathoms more on the start.

Q. And if you had paid out after sighting, taking up and sighting your port anchor, would you pay it out again? What would you say, would you pay it out?

A. I would let the second anchor go before I paid out too much chain—I mean the first original anchor,

(Testimony of B. B. Whitney.)

or the anchor I would have sighted I would let go before I paid out too much chain on the starboard anchor, probably would let go about forty-five or fifty-five or sixty, not to exceed sixty fathoms on the starboard anchor before I would let the port anchor go again.

Q. And then how much would you pay out further on both of these anchors?

A. I would pay out; I would keep paying out in equal amounts and keep the strain as even as I could on the anchors until I got the biggest end on the starboard hand.

Q. And the amount of chain would depend upon--that you would pay out would depend upon how the wind increased?

A. Certainly, yes; or in my judgment how much it needed to hold the breeze.

Q. What would be the duty of a shipmaster under the circumstances I have stated, with night coming on, and an increasing southerly storm, southerly winds, in respect to taking soundings and making observations to see whether he need to pay out more chain, or whether his tackle was holding?

A. It is customary, no matter whether you are holding or dragging, if there is more than an ordinary breeze blowing, it is customary to get the deep sea lead, and drop it to the bottom, and give a little slack line to it, and try occasionally to see if that line is plumb or not. If the line tends forward, we know that the ship is

(Testimony of B. B. Whitney.)

dragging; can't be anything else. That is done always as a matter of precaution.

Q. Now, Captain, assuming that after being anchored the second time, between ten and eleven o'clock that night, the wind increasing, and in the meantime the port chain having been secured by a tackle made fast by a hook at one end of the tackle, and a half, or an inch and three-quarters hook, being fastened into a strap about the cable, and the hook at the other end of the tackle into a chain about the foremast, that the hook straightened out, and that tackle gave way, and the ship began to drag; and it was subsequently discovered that the port anchor was gone, when, in your opinion, would that port anchor chain have broken?

Mr. ASHTON.—We object to that as being too problematical.

Q. Would it in your opinion have been injured at the time of the breaking of the compressor and the first dragging, or could it have been broken by the strain which stretched out the hook?

A. How big was the hook?

Q. An inch and a half or an inch and three-quarters?

Mr. ASHTON.—Same objection.

A. Well, I presume that the equipment, the cable would be—well, how thick was the cable?

Q. Two and a quarter inches?

(Testimony of B. B. Whitney.)

A. Oh, no, a hook of that size couldn't possibly part the cable.

Q. At that time the "Rickmers" swung so that she drifted down upon the "Mildred," located approximately as appears on this Exhibit No. 12, and took off her jib-boom, the wind being southerly. How, in view of the situation of the tackle as above described could that be accounted for in your opinion?

A. The wind southeast?

Q. Southerly, or south; the wind south.

A. Well, if the wind didn't vary any from south.

Q. In view of the situation of the land there, the wind varying?

A. Of course, I know myself from personal observation, I know that the wind, the south wind is pretty steady there, because there is quite a high bank, a high hill around; and sometimes it will draw around the point here and blow pretty strong around the point, and other times it will draw around the hill the other way; and the only way that she could get into this vessel here would be the squalls coming variable to some extent, heavy squalls out from this hill here would drag her that way at first before she dragged the other way.

Q. If her port anchor was trending aft or toward the stern of the ship, the strain would not come on it until the starboard anchor first dragged sufficient to bring the ship back to where it would take the strain on the port anchor?

A. Certainly not.

(Testimony of B. B. Whitney.)

Q. And now, then, the strain then coming on the port anchor, and the chain parting, would the ship then the ship would swing back, wouldn't she, to her starboard anchor?

A. She would have to ride her starboard anchor, of course, altogether.

Q. The parting of the chain, after the chain had been taking the strain for the first time on the port anchor, the parting of that chain would cause her to swing back again, but that would swing her to the west under those circumstances, would it not?

A. If when the starboard anchor was thrown out it was looking to the west, she would have tailed that anchor.

Q. Assume that after striking the "Mildred," she then clears and drifts for approximately a half hour, the wind veering to the southwest, and bears down upon the "Stimson" and strikes it, what in your opinion, if the wind was say in the neighborhood of thirty miles an hour at that time, twenty-five or thirty or upwards, could the "Stimson" have done to prevent the collision occurring, say between eleven and twelve o'clock midnight, in such a storm?

A. I don't know that she could have done anything.

Q. Why not?

A. The only thing she could do would be to slip her chains and go ashore herself; that is all; slip her chains. That is the only thing I could see she could do.

(Testimony of B. B. Whitney.)

Q. Could she do anything in the way of hoisting sail which would be safe under those circumstances, or likely to be effective as a means of avoiding the collision?

A. Oh, I don't think so. She is too big a vessel to try dodging with sails on her. How big is the "Stimson"? She must be seven or eight hundred tons. I think she has been inspected. I am quite sure she has been inspected, and she must be over seven hundred tons.

Q. Yes, sir; and one hundred and eighty-two feet in length?

A. That trick can be done with small vessels, little small schooners, especially riding as a manila or hemp hawser, they can set sail and dodge to one side if they saw a vessel coming down on them fast, so when they shored to one side the vessel might pass on the other in time to leave their next turn the other way, and have come back.

Q. The "Rickmers" was dragging her starboard anchor and consumed in the neighborhood of half an hour in traveling that distance which was approximately half a mile?

Mr. ASHTON.—No, not as much as that, is it?

A. It is about five-sixteenths of a mile, isn't it?

Q. Well, it is approximately a half a mile. Would that ship under the circumstances I have described including the circumstances of wind and weather, move

(Testimony of B. B. Whitney.)

toward her in a uniform direction, so a lookout on the part of the ship or the officers or crew of the "Stimson" could determine until she was near at hand whether she was likely to collide or not and would her movement be variable?

Mr. ASHTON.—We object to that as leading and suggestive

A. That would of course depend a great deal if the wind is variable, and it is daylight and you can see the vessel coming you could calculate pretty close where she is coming to you and travel past; but I don't think a person could determine in the night. In the first place you couldn't know she was dragging until she got pretty close to you; and dodging with sails a vessel of that class is too large to practice that. It is only successfully done occasionally with small vessels.

Cross-examination.

(By Mr. ASHTON.)

Q. Captain Whitney, suppose you were the master of a ship like the "Stimson," you have some recollection of her, and she was anchored at the place shown on this Exhibit No. 12, and that you had a lookout on duty, it was night-time, but your lights were burning, your anchor lights were burning, and the anchor lights of the "Rickmers" were burning, and that you heard the crash of the "Rickmers" going into another ship ahead of you, about half a mile distant, and that you could

(Testimony of B. B. Whitney.)

then see that the vessels so crashing together had gotten apart and that one of them as you could see by her lights was progressing toward you, that you had out one hundred and five fathoms of chain and swinging to one anchor, would you as a master mariner simply stay there and take your medicine and let the ship come down on you and strike you, or would you do something, and if so, what?

Mr. HUGHES.—We object to that as assuming a state of facts not in accordance to and contrary to the evidence.

A. Well, if I had any more chain I would give it to her; and of course, I would delay the accident as long as possible; on a vessel the size of the "Stimson" I think I would set head sails and swing her; but it is as liable to catch her back of the wrong side as on the right side.

Q. Just answer my question. I want to know if you would do anything that a man would usually do, and if so, what?

A. I don't know what else I could do than to give her more chain, if she had it; but probably she didn't have it.

Q. Then you think as a master mariner you could have done nothing except to give her some sail if possible to do so, in such a gale of wind, or to pay out more chain?

A. I would give her more chain, but as far as setting sail is concerned, that is a matter which takes time.

(Testimony of B. B. Whitney.)

Q. Don't you know as a master mariner that any ship riding at a hundred and five fathoms of cable and but one cable out that that ship can be veered or moved with her helm without any sail?

A. Well, if she can, Mr. Ashton, it is a new one on me.

Q. What would you say, if there was a good strong tide running?

A. She could be veered a little, but not so very much. Yes, with one hundred and five fathoms of cable she could be veered quite a little bit if the tide was running strong.

Q. So you would try and veer her?

A. I would delay the accident as long as possible, if I could, of course.

Q. Assuming that the wind was so violent that you would not be able to do anything with the sails, would you have simply waited and taken your medicine as I stated, or would you have made any attempt with your helm?

A. That is absolutely useless. Your helm is always lashed, and it would be useless, unless there was a good strong current you could not veer your vessel a particle with the helm; you couldn't veer it a particle with the helm.

Q. You say, then, that if the helm on this night in question had been hard to starboard it wouldn't have affected the "Stimson" at all?

(Testimony of B. B. Whitney.)

A. Not in the slightest, unless there had been some current passing past the vessel, which relatively makes her passing through the water; that is the only way a vessel will steer.

Q. That is, by a tide or otherwise?

A. Yes, sir. Of course, when the current is passing rapidly past a vessel, she relatively is passing through the water but she can't steer without that headway.

Q. What kind of bottom is there in Shilshoal Bay north of West Point?

A. There is a variable bottom there. It is gravelly in places, and places there is clay, spots there which are clay.

Q. Any sand?

A. There is some sand, but it is principally gravel and clay. I will qualify that statement a little though by saying that I never anchor quite so far north as that. I anchor probably a quarter of a mile nearer West Point than where these marks are. I have anchored vessels on these places, but I have never taken the soundings. My laying for shelter there was when I was towing logs, and I have found that the bottom varies from gravel to clay.

Q. And you generally lie closer to the Point?

A. I generally try to find clay.

Q. That is because clay is better?

A. Yes, sir; the logs hold pretty hard in a gale of wind.

(Testimony of B. B. Whitney.)

Q. And clay is a better holding ground as compared with sand or gravel?

A. Yes, sir; if I didn't find clay, I used to work the wheel all night long. If I found clay it was different. It was holding if the anchor was in the ground.

Q. If you were coming to anchor out in what is Shilshoal Bay, and what is nearly an open roadstead, so the wind can get a quarter at you from any quarter, and we will say the wind is blowing from the southwest, and you are going to put out two anchors, would you put them both out to windward? A. Sure.

Q. You would hold both to windward?

A. Sure.

Q. You would not fork your anchors at all?

A. I would spread them a little so that if they did start to drag they would not foul each other; just spread them enough to clear each other. If I wanted to moor a ship ahead and astern, the proposition is different then, of course.

Q. Well, suppose you wanted to moor a ship in the safest possible way, with the wind blowing at storm velocity, or increasing, and the wind variable, shifting at times, and blowing in gusts, how would you place your anchors if you were going to use two of them?

A. I would place the anchors so they would be to windward. Of course, an anchor to windward is what the old sailor always wants.

Q. Well, would you put them both in the same place?

(Testimony of B. B. Whitney.)

A. I would spread them just enough so they would not foul.

Q. You would not do that with the wind blowing in gusts?

A. I would get the mean of the gusts as near as I could, get the direction of the wind, and spread my anchors accordingly.

Q. Now, Captain, how much cable is allowed; what is the rule which is followed amongst master mariners as to the length of cable you would pay out in proportion to the depth of water?

A. In ordinary weather, two and one-half times the depth of water is usually considered a right range of cable, in ordinary weather.

Q. I want the rule of the United States Navy as to paying out.

A. I don't know what the navy rule is; I can't tell you offhand whether that rule I have given is any association rule or not, but that is the rule which goes among sailors. Of course, now, that all depends upon the weather. If it is really calm, we sometimes anchor if we are not going to stay awhile, we drag the anchor on the bottom, if it is calm. But if we are going to stay any time, and any wind blowing, say a fresh breeze, we put out two and a half to one.

Q. What would you put out in a gentle breeze?

A. What some people call a gentle breeze is different.

(Testimony of B. B. Whitney.)

Q. What would you put out when blowing from sixteen to twenty on the Beaufort scale?

A. Twenty miles an hour is a fresh breeze.

Q. On the Beaufort scale?

A. I can't tell you offhand, but twenty miles an hour is a fresh breeze, thirty miles an hour is a gale, and forty miles an hour is a heavy gale or is a high gale. But among sailors, in the general acceptance of the term, twenty miles an hour is a fresh breeze. About two and a half to one—if I was coming to anchor myself, I would use about two and a half to one.

Q. In any more than a fresh breeze?

A. Well, I would use it in a strong breeze; that is any more than a fresh breeze.

Q. Would you do that when in lee of the shore?

A. Oh, yes. I would not come to anchor unless I were lee to the shore, unless it was some special occasion.

Q. Don't you know that it is a general rule, Captain, among master mariners that aside from the storm that they generally pay out say two fathoms of cable for every fathom of depth?

A. That is not for strong winds; that would be all right for a gentle breeze.

Q. I mean for anything less than a storm?

A. Oh, no; that is not enough.

Q. Do you know whether or not that is the rule in the United States Navy? And that is taught at the

(Testimony of B. B. Whitney.)

Navy Academy at Annapolis, that is anything less than a fresh breeze?

A. I don't know anything about that, but I will tell you what my practice always was.

Q. I am just asking you the question, Captain, under this cross-examination. Just answer yes or no.

A. I don't know what their rule is.

Q. Now, in all your testimony regarding what you have done in the way of paying out more chain and everything of this kind, the general questions which were asked you, you were figuring upon everything being clear astern of you, and your having room to do everything you referred to?

A. Yes, sir; I certainly did. A safe berth.

Q. That is all.

Redirect Examination.

(By Mr. HUGHES.)

Q. From the location of these ships shown upon the diagram you would have considered that a safe berth if you had been at liberty to employ the tactics you say you would employ under conditions in which they were stormy weather and increase of wind?

Mr. ASHTON.—We object to that as not proper re-direct examination, having been covered in the former testimony.

A. I think that proposition was eleven hundred feet?

Q. Yes, sir.

(Testimony of B. B. Whitney.)

A. Assuming that eleven hundred feet was the distance, it was certainly a safe berth.

Mr. ASHTON.—I move to strike out that answer as based upon an incompetent hypothesis.

Q. Captain, the other ships were heading the same way as yours as long as the wind was blowing toward them?

A. Generally, yes, sir; of course, a ship lying at anchor swings more or less a little to one side or the other; but generally they will tail in the same direction, pretty near the same.

Q. The only danger of ships fouling by reason of the scope of their anchor chains not being sufficient would arise under what circumstances?

A. I don't quite catch the question?

Q. (Question read.)

A. When they anchor too close to each other is all.

Q. Well, could that happen unless the wind was blowing? What I want to get at is could that occur if the scope of the chains did not leave a clear way; could that occur under any circumstances other than at the changing of the tide in calm weather when they swung in opposite directions?

A. Why, no; if they are all tailed in the same direction; they have got to be clear to each other. Of course, in the swing of the tide, one might swing one way and one another, and the lengths of the vessels with a little load on the cables might come together possibly. That

(Testimony of B. B. Whitney.)

would depend entirely on how far they were apart when anchored.

Q. In stormy weather, with an increasing wind rising to a gale, you say you would increase the scope of your chain? A. Yes, sir.

Q. As the wind diminishes, what do you then do in the exercise of good seamanship; haul in your chain or leave it out?

A. It is the usual practice to heave it in. Of course, you don't have to unless you want to. It don't do any harm.

Q. In respect to the rules of the navy, the government of ships are different entirely, both in respect to the character of the ships and with respect to their anchors, and holding appliances from ordinary sailing vessels, aren't they?

A. I don't know what the government rules are for weights of cables or anchors; I don't know anything about their rules; I never studied them.

Recross-examination.

(By Mr. ASHTON.)

Q. Suppose, if you were going to pay out cable, and a vessel was eleven hundred feet astern of you, and in such position that you would be liable to foul her if you dragged, and the wind increasing, you wouldn't figure on that other vessel standing still, would you? You would figure on him doing what you were doing, wouldn't you?

A. I would naturally expect, of course—

(Testimony of B. B. Whitney.)

Q. (Interrupting.) Wouldn't any—

A. (Interrupting.) That he would be paying out—

Q. (Interrupting.) Wouldn't any prudent mariner be paying out chain?

A. I would expect her would be paying out about the time I was paying out. Necessarily, it would depend upon each man's judgment and the strength of the wind and the weight of his holding gear; some vessels are better equipped with weights of anchors than others.

(Testimony of witness closed.)

DAVID GILMORE, a witness on behalf of libelant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HUGHES.)

Q. Give your full name? A. David Gilmore.

Q. Are you a master mariner? A. Yes, sir.

Q. How long have you been a master mariner?

A. Well, I went to sea in 1854, and took charge of a ship in 1868.

Q. Are you familiar with navigating in Puget Sound and its harbors, and the Pacific Ocean?

A. Yes, sir.

Q. And have been for forty years or thereabouts?

A. I came here in 1866, about thirty-eight years.

Q. I will ask you to examine this chart, Claimant's Exhibit No. 12. On the night of December 25th, or the

(Testimony of David Gilmore.)

afternoon and night of December 25th, 1901, the schooner "Stimson" was at anchor at a point approximately indicated on this chart at the cross at the letter "S," the schooner "Corona" at the cross marked with the letter "C," the "Mildred" at the cross marked with the letter "M." About four o'clock in the afternoon of that day the German ship "Robert Rickmers," in ballast, being a ship having a net register of, I believe, 2,174 tons or thereabouts, in tow of the tug "Tacoma," was brought into Shilshoal Bay. At that time the wind was blowing from fifteen to twenty miles an hour from the southeast in gusts, that is, sometimes the gusts being higher than that. She was brought up and cast her port anchor at approximately the point indicated or located on this chart with a cross and the letter "R." She payed out about forty or forty-five fathoms of chain, made fast her chock or compressor to hold the chain, the appliance used for that purpose being such an appliance as shown in Claimant's Exhibit No. 5, which I now show you. At that time that appliance broke, and ten or fifteen fathoms of chain ran out in addition—

A. After they brought up the ship?

Q. When they brought the ship up and applied this chock, made fast this chock, it parted.

A. And fifteen fathoms more chain ran out.

Q. Yes; and at the same time the ship continued to go and drag her anchor.

A. Still dragged?

Q. Yes, it continued when the chain quit running out.

(Testimony of David Gilmore.)

the ship continued to go, dragging her anchor, until she came back to the schooner "Corona."

A. Which side of the "Corona," on the starboard side?

Q. On the starboard side of the "Corona."

A. Did she get as far back as the "Corona"?

Q. Yes, got as far back as the "Corona"; and the "Corona" sheered some by putting up a small fore stay-sail.

A. Sheered which way?

Q. To the inshore, so that she passed back as far as the location of the "Corona," when she was picked up by the tug again and towed back approximately to the original location.

A. Where they let go the first anchor?

Q. Yes, sir. Assuming, further, that at that time the "Rickmers" did nothing more than to take in the extra chain which had run out, the ten or fifteen fathoms which had run out on the port anchor, which was the only anchor at that time, and without taking in any more chain allowed herself to be towed back. I will ask you to state whether or not it was good seamanship to go back there without taking her anchor off the ground or hoisting it at any time before again coming to anchor, so she could inspect or weigh her anchor and determine whether it was foul or had been affected by the accident which had occurred.†

Mr. ASHTON.—We object to that as incompetent, as-

(Testimony of David Gilmore.)

suming a hypothesis not justified by the evidence, and therefore irrelevant.

A. Well, if I had been in charge of the ship, I would have had the steamer hold on to me until I hoisted up the port anchor, and then pulled me up to the right position, and they let go my second anchor. Because that anchor was evidently not fully fast there, when she dragged back past the ship. The having the steamer tow her and letting go another anchor didn't help that anchor any, the port anchor.

Q. When she was towed back to her original position her port anchor not having been hoisted off the ground at any time, she put out her starboard anchor with thirty fathoms of chain off her starboard bow, her bow being sheered around by the tug to the eastward for the purpose of putting out her starboard anchor. What do you say whether it was good seamanship to anchor in that way under those circumstances with that scope of chain and the wind blowing fifteen or twenty miles an hour?

A. I would not let go the second anchor when the first was hanging until I got it up and the *steamer* put me in proper position to anchor.

Q. Under those circumstances, if the starboard anchor was put out, as stated, which anchor would hold the ship?

A. Well, the starboard anchor would hold it.

(Testimony of David Gilmore.)

Q. Under those circumstances could the strain of the ship ride at all upon the port anchor?

A. No, not until if she dragged away back to where she was before.

Q. Under those circumstances, would you say sufficient chain was payed out?

A. How much was payed out?

Q. Thirty fathoms on the starboard anchor?

A. And how much water?

Q. Thirteen or fourteen fathoms of water?

Mr. ASHTON.—We object to all these questions as assuming conditions not justified from the evidence given by the officers of the “Rickmers.”

A. No, there was not sufficient chain payed out. I would have given her more if I had room.

Q. The distance between her location and the “Mildred” and the “Corona” respectively being about eleven hundred feet, what would you say as to whether there was sufficient room to pay out the chain?

Mr. ASHTON.—We object to that as incompetent.

A. Eleven hundred feet from the “Corona” was where the ship’s anchor was let go?

Q. Yes, sir.

A. And the ship was two hundred and sixty-seven feet long, there was fifteen fathoms of water, and thirty fathoms of chain, and she would be to the leeward to where the anchor was, and three hundred feet long—

Q. Two hundred and sixty-seven feet long:

(Testimony of David Gilmore.)

A. Call it three hundred, that would be four hundred feet; it would be six hundred feet from the "Corona" and thirty fathoms.

Q. Seven hundred feet from the "Corona."

A. They might have given her thirty fathoms more chain, would have been safe enough. That is what I would have given her, if that is the way the wind was blowing.

Q. Now, Captain, later in the night, the storm increasing and the wind blew harder. As the wind increased, what would you say as to what good seamanship required and the requirements in respect to the observations she should take as to her holding, and with respect to paying out more chain?

A. Well, I should pay more chain out right at first. I wouldn't wait until it blew harder, and then if it blew harder I would give her more chain.

Q. Would good seamanship require that he keep taking soundings to observe whether he was drifting?

A. Well, blowing as hard as that, and he only had thirty fathoms of chain out and another anchor chain astern; he had to have the deep sea lead out to see whether she was dragging, and I would have given her more chain before she started to drag.

Q. Now, between ten and eleven o'clock that night, the wind having increased, she dragging her anchors, her tackle rigged to take the strain off the windlass after the breaking of her chock became useless by reason of the hook straightening out, and either at that

(Testimony of David Gilmore.)

time or previous to that time her port anchor chain parted, and she dragged chart, taking off her jib-boom, and then she drifted, the wind shifting from the southwest, down upon the schooner "Stimson." I will ask you to state, under those circumstances if the "Stimson" riding at anchor with her full scope of chain out, one hundred and five fathoms, what if anything could the "Stimson" have done to avoid the collision?

A. Well, if I had been on the "Stimson," and saw that ship coming down on me, and after I had made up my mind which side I would have got some headsails and sheered her to one side as far as I could.

Q. Do you think that would be likely to be practical?

A. You could do it, you don't know whether it would result in value or not.

Q. Would it be likely to put you in the way of the other ship, would it not when the chances for observation in the storm would be such as existing at that time?

Mr. ASHTON.—We object as leading and cross-examination of his own witness and argumentative.

A. I said when I thought the ship was coming down on me and that if I could sheer my vessel, I would certainly put some headsails on her to try to avoid the collision.

Q. What would you say considering the weather and the time of night as to your being able to determine

(Testimony of David Gilmore.)

whether this ship would collide with you enough in time to do any good?

A. While she was dragging, she wasn't coming very fast; when a ship drags she don't come very fast, and after I saw I could get the ship fairly located if I could have set some sails and sheered off I would have done it.

Q. What would the ship do in that circumstance?

A. She would go a certain ways off, and then come back again.

Q. I will ask you if in time the ship might not swing back in line, and when she would, you would not be clear?

A. Well, she could be any worse than it was before she had swung, before she set the sail.

Q. Before you set a sail you could not determine whether the ship would pass you?

A. I say I would determine whether she would pass on the starboard side, and then I would get the sail and haul her to windward and sail her over to port. The vessel would swing a certain distance, not very far; but she would swing one hundred feet or two hundred feet, and give her a chance to pass by and then she would swing right back again.

Q. That is all.

Mr. ASHTON.—I have no questions, Captain.

(Testimony of witness closed.)

J. B. LIBBEY, a witness on behalf of libelant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HUGHES.)

Q. State your name please.

A. J. B. Libbey.

Q. You are a master mariner? A. Yes, sir.

Q. And how many years' experience in seafaring, and handling vessels? A. Since 1871 or 1872.

Q. You are the manager of the Puget Sound Tugboat Company? A. Yes, sir.

Q. Are you acquainted with Shilshoal Bay?

A. Yes, sir.

Q. What kind of anchorage is it in that bay?

A. I would consider it good.

Q. Do you know anything about the currents in that bay? A. Yes, sir.

Q. What is the fact in respect to the currents there?

A. The fact is there is little or no current in Shilshoal Bay, don't amount to anything.

Mr. ASHTON.—Do you mean tidal current?

A. I suppose you mean set of the tide.

Mr. ASHTON.—You are referring to tidal currents only?

A. Yes, sir.

Q. (Mr. HUGHES.) Within half an hour or an hour after low tide, what current, if any, would set along the shore there?

(Testimony of J. B. Libbey.)

A. I have noticed much if any current along the shores of Shilshoal Bay. I have towed a great many logs along all around Shilshoal Bay, thousands of logs, and I never noticed any strong current of any description.

Q. I will ask you to examine this chart marked Claimant's Exhibit No. 12. On the afternoon of December 25th, 1901, the schooner "Stimson" lay at anchor at the point indicated by the cross at the letter "S," the schooner "Corona" at the point indicated at the cross at the letter "C" approximately, the schooner "Mildred" at the point indicated by the cross at the letter "M," and the tug "Tacoma" having in tow the German ship "Robert Riekmers," a ship in ballast, a large ship of a net register of over 2,100 tons. She was brought up to the location approximately where the cross is at the letter "R," and given anchorage there and she put out her port anchor with forty to forty-five fathoms of chain and made fast her riding chock, a device for holding the chain illustrated in Claimant's Exhibit No. 5. When the ship took up the slack of the chain, or at about that time that the chock was made fast, the chock broke the strain coming entirely on the windlass, and some ten or fifteen fathoms of chain more ran out, and the ship continued on when the chain was made fast or started to run out, dragging her anchor until she came down to the "Corona," a distance of about three-sixteenths of a mile. Then the tug picked her up, made fast a line and

(Testimony of J. B. Libbey.)

held her there for a time and she began to haul in chain and continued to do so until the tug had cleared her cable which had fouled in her propeller and made fast a cable on board the "Rickmers" and then towed her back again to approximately the original location. The "Rickmers" before being towed back did not at any time until she came to her second anchorage or afterwards take in more than ten or fifteen fathoms of the extra chain which had run out so that she at all times from the time she first put out her port anchor had out not less than forty fathoms of chain. I will ask you to state, Captain, whether or not in your opinion it was good seamanship for the "Rickmers" to come to anchor again and put out her starboard anchor with thirty fathoms of chain without having hoisted her port anchor and without doing any different with her port anchor than from the facts stated in my question.

MR. ASHTON.—We object to the question as incompetent, and irrelevant, for the reason that it assumes conditions and hypotheses which cannot be supported by the testimony or the weight of the testimony to the present time in this case.

A. I consider it poor seamanship on the part of the master of the vessel.

Q. In what respect? State fully.

A. Well, from the fact that he had his anchor had dragged from the time of his first letting go. It would have been the proper thing for him to have

(Testimony of J. B. Libbey.)

sighted his anchor, that is, hoisted his anchor up to the surface so he could see whether his anchor was all right, and everything was clear about it.

Q. What would be the effect of his allowing his anchor to remain on the ground with his forty fathoms of chain out respecting the situation of his port anchor when he came to his berth the second time? And putting out his starboard anchor?

A. Why the tug taking him to windward with his anchor dragging on the bottom, the chain would necessarily trail right aft, and come along and pass over where that anchor was originally let go on the bottom, and the bight of the chain would in all probability catch the fluke of the anchor and foul the anchor.

Q. Under those circumstances, what necessarily would be the position of the port anchor?

A. The port anchor would lead right aft, and the starboard anchor would lead ahead, on the starboard bow.

Q. Which anchor would take the weight of the ship?

A. The starboard anchor altogether.

Q. Would, in your opinion, would it be good seamanship under those circumstances to have put out the two anchors in such position, in a southerly gale blowing at a mean velocity of fifteen to twenty miles an hour or upwards?

Mr. ASHTON.—Same objection. And I would like to have the understanding that I am objected for the same reason to all of these questions.

(Testimony of J. B. Libbey.)

Mr. HUGHES.—Certainly.

A. Decidedly not.

Q. Why not?

A. Because the strain of the vessel would come upon one chain, that is, the second anchor let go. The starboard anchor would have to hold the whole weight of the ship and any strain that might come, any attendant strain to the ship would be hanging to that chain, the entire weight of the vessel.

Q. Under those circumstances, riding with the strain of a ship coming upon the starboard anchor, what would you say as to what would be sufficient scope of chain, and the wind blowing with a mean velocity of fifteen to twenty miles an hour and upwards?

Mr. ASHTON.—We object to that as incompetent.

A. Well, I know of no rule, any established rule as to the requisite amount of chain which should be given to a ship. It is always enough, whether it might require forty-five or sixty or seventy-five or ninety or one hundred and five fathoms, or whatever length it requires to hold the vessel is the practice I have always followed.

Q. What is your judgment, under such conditions, considering the locations of the ships, and the character of the weather and of the wind, and the direction of it, and the fact, if I have not added it, the fact that the wind was squally, that is, blowing in gusts, what in your opinion, in the exercise of good seamanship, would

(Testimony of J. B. Libbey.)

be a proper amount of chain to pay out under such circumstances?

A. When she first anchored?

Q. On the starboard anchor, when she first put out her starboard anchor, assuming that her port anchor was in the condition I have described?

A. Well, not less than sixty fathoms to begin with.

Q. If the storm increased, or the velocity of the wind increased in violence and in fitfulness, what then, in the exercise of good seamanship, should be done?

Mr. ASHTON.—We make the same objection as before.

A. I would pay out chain on both anchors.

Q. If under those circumstances you thought it advisable to put out two anchors, having in mind now the fact that the first anchor had dragged when forty to forty-five fathoms of cable were out, that the riding chock or the device by which that port chain was held had broken, and that a tackle was made fast to it for the purpose of relieving the strain upon the windlass and that tackle having been made fast by a hook an inch and a half or three-quarters in diameter, in what manner in your opinion should the two anchors have been put out, in the exercise of good seamanship?

A. In the amount of chain?

Q. As to position and scope of anchor and chains?

A. The anchors should have been spread sufficiently so that they would not be liable to foul each other, and

(Testimony of J. B. Libbey.)

the scope of the chain would be, say, from sixty to seventy-five or ninety fathoms.

Q. Referring to the device which is shown on this diagram which is marked Claimant's Exhibit No. 5, what is the purpose of or the intention of such a mechanical device on a ship?

A. The purpose is to grab the chain and hold it and to relieve the windlass of any strain. You see this chain goes through here, and that is screwed up on each side and clamp the chain. The holding device is always forward of the windlass so after it is clamped, it takes the whole strain off the windlass.

Q. What is the strength, the effective strength of such device as compared with the tensile power of the chain?

Mr. ASHTON.—Objected to as incompetent.

Q. That is, assuming that it is a proper equipment?

A. That is supposed to hold the full strength of their chain or more. That is known as a riding chock in our vessels.

Q. If, under the circumstances I have described, that device broke when the ship took up the strain, or rather, when the full force of the ship, or the weight of the ship, came upon the cable and compressor, would good seamanship require in your judgment that that anchor should be hoisted so that both anchor and chain could pass under the inspection of the officers of the ship to ascertain whether the same strain that had broken the chock or compressor

(Testimony of J. B. Libbey.)

had in any way impaired the strength of the anchor or the chain, or broken it?

Mr. ASHTON.—Objected to as leading and suggestive.

A. It is good seamanship to always sight an anchor after it has dragged.

Q. Now, Captain, assuming that these ships, when the “Rickmers” the second time came to her anchor, were so located that their positions, the positions of the vessels were as given by the officers as indicated on this chart, Claimant’s Exhibit No. 12, and as will appear from the use of dividers the distances shown between these ships was about eleven hundred and forty feet, what would you say as to whether that was a good berth, and a safe one?

Mr. ASHTON.—That is objected to as incompetent.

A. I would say that the berth was safe.

Q. What would you say as to the situation of these ships with to the ability of the master of the “Rickmers” to give sufficient scope, in your judgment, to his chain, to meet the conditions of the weather?

Mr. ASHTON.—We object to that as incompetent and irrelevant, and further that this witness is not qualified of these facts.

A. In my judgment he had ample room to give his vessel sufficient scope of chain.

Q. Now, the tackle which was rigged to the port chain after the riding chock, or as their witnesses call it, the compressor, broke, was a tackle somewhat of the char-

(Testimony of J. B. Libbey.)

acter of a luff tackle, in which the hook at one end was made fast in a band of manila rope or strap of manila rope around the cable and was made fast in some way to a band or shackle around the foremast. About ten o'clock P. M., or shortly thereafter, on that night the wind increasing, in some way this hook pulled out. It was subsequently discovered that the port anchor chain had parted, and the port anchor was gone. The "Rickmers" then continued drifting until she came in collision with the "Mildred" and took off her jib-boom. She then drifted until she finally came into collision with the "Stimson." Now, keeping in mind the location of these ships as shown on this chart, I will ask you to state what, if anything, could be done effectively by the officers and crews of these two vessels to avoid the collision; the storm increasing in velocity and the wind shifting to the southwest, and blowing in gusts, and being fitful?

Mr. ASHTON.—We object to that as being incompetent, leading, argumentive and not based upon a proper hypothesis.

Q. What could either of these vessels have done to avoid the collision?

A. Payed out chain, if they had any left.

Q. What would say that the "Rickmers" could do and what is your opinion would be the effectiveness of their attempts?

A. The "Rickmers" could not have done anything, it

(Testimony of J. B. Libbey.)

don't seem to me, only to continue to drag. All she could do was to pay out chain, and she had nothing else to do.

Q. What could the "Stimson" do, her chain being payed out?

A. They might have attempted, when nearing collision, to have sheered or veered the vessels one way or the other.

Q. Keeping in mind the stormy night, which was dark and stormy, and the wind blowing from twenty-four to thirty miles an hour, and odd, or more, and in gusts and being fitful in direction, so fitful that the ship veered to the westward as it struck the "Mildred," and afterwards goes further northward where it strikes the "Stimson," what in your opinion would be the effectiveness of any attempt made to avoid the "Rickmers" by the "Stimson"?

A. Oh, I don't imagine there was any possibility of their avoiding the collision by the shifting of any wheel or hoisting any headsails. She simply could go a short distance until she would bring up on the chain, and that would swing the vessel's head and turn her in the opposite direction, and then she would go a certain distance on that tack, and she would simply be racing back and forth across the track of the "Rickmers"; and it is merely problematical which way she would strike the vessels; she was bound to strike her one way or the other, which way she would strike the "Rickmers."

Q. By adopting that course and putting up any sail,

(Testimony of J. B. Libbey.)

what would be the effect as to whether she would expose a broader scope to the course of the "Rickmers"?

A. Oh, certainly she would expose a great deal more, of course, in the track of the "Rickmers"; she was directly across the track of the drifting down to her, and the way she was going, sheering across the direction, if she were doing that, that the "Rickmers" was drifting.

Q. And the wind being fitful in its course would have also affected the course of the "Rickmers"?

A. Yes, sir, any vessel at anchor is swinging all the time, every time there is the slightest shift of wind she swings in the direction it strikes her.

Q. And the other vessel dragging her anchor would be affected by the change in the course of the wind?

A. Yes, sir; and more particularly if they put up any sail.

Cross-examination.

(By Mr. ASHTON.)

Q. Captain Libbey, you were saying a moment ago that your idea was that the "Stimson" could not have done anything when the "Rickmers" was approaching her?

A. I said she might attempt to alter her wheel, shift her rudder, or possibly put up some headsails.

Q. Well, now, supposing she put her helm hard to star-board, that would have pushed her off for considerable time, with one hundred and five fathoms of chain?

A. With the weight of your chain, your rudder would not have much effect in an ordinary tide way.

(Testimony of J. B. Libbey.)

Q. It—wouldn't it have given that ship a sheer?

A. Possibly. I wouldn't say it wouldn't, but I wouldn't say it would.

Q. Well, you don't want to be understood as saying that the "Stimson" couldn't have dodged the "Rickmers"?

A. She might have attempted to.

Q. Now, Captain, with the wind at that velocity, it would have taken but a very few instants of time, a very few seconds for the "Rickmers" to have passed the "Stimson" after she reached her, wouldn't it?

A. I don't know how fast she was drifting, Mr. Ashton. Of course, if she was drifting rapidly, it wouldn't take very long to pass the ship.

Q. Now, just suppose she was pretty high out of the water, she wasn't laden, she was in ballast, she was a large, heavy ship, as you know?

A. Yes, sir, I know the ship well.

Q. Now, the wind was blowing, we will say, anywhere from sixty to seventy miles an hour. Don't you know as a master mariner of experience that the ship would have passed another ship in almost instantly, or in a few seconds of time?

A. It depends upon how hard her anchors were holding.

Q. I am assuming her anchors were in the ground and she is drifting.

A. Yes, sir, it wouldn't take very long for her to pass the "Stimson."

(Testimony of J. B. Libbey.)

Q. But a few seconds?

A. Well, I think minutes anyway, perhaps two or three or four minutes.

Q. That is a long period of time, Captain?

A. Yes, I know that; but there is another ship, you know, and one hundred and five fathoms of chain out.

Q. You think it would take her even quite one minute to get by a ship like the "Stimson," before a gale of wind like that?

A. Yes, sir.

Q. You think it would take more than one minute?

A. Yes, sir.

Q. Now, you wouldn't like to fix anything definite about these things, would you?

A. No, sir, I would not.

Q. Are you the manager to whom Captain Orrison referred in his testimony?

A. Yes, sir.

Q. To whom he reported that night?

A. Yes, sir.

Q. What time did he report to you?

A. Why, I think it was between six and seven o'clock, along about that time.

Q. You are the manager of the company, and part owner or one or the main owner of the company that own both the "Tyee" and the "Tacoma"?

A. Yes, sir.

Q. And still own both tugs?

A. Yes, sir.

Q. And they were both operated under your management and direction at that time?

A. Yes, sir.

(Testimony of J. B. Libbey.)

Q. What is your recollection as to the wind that Christmas night?

A. There was a strong breeze; it was blowing hard.

Q. You would call it a storm, wouldn't you?

A. Yes, sir.

(Testimony of witness closed.)

R. B. ROSS, a witness on behalf of the libelant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HUGHES.)

Q. What is the position you occupy, Mr. Ross?

A. Engineer of the tug "Tyee."

Q. In December, 1901, were you the engineer of the tug "Tacoma"?

A. Yes, sir.

Q. How long have you been engineer of one of the tugboats of the Puget Sound Tugboat Company?

A. About eleven years.

Q. Were you on board of the "Tacoma" while towing up the "Rickmers" from Port Townsend to the place of anchorage in Shilshoal Bay on the afternoon of December 25th, 1901?

A. Yes, sir.

Q. What is your position or location on that ship—what is the station that the engineer occupies there? Describe it so as to show your opportunity for making observations?

A. He is generally stationed at the engine in order

(Testimony of R. B. Ross.)

to answer bells; but on this occasion I was standing around; the second or assistant engineer was on watch.

Q. In the engine-room?

A. Yes, sir; it was a cold evening; and I generally sit inside.

Q. Is the engine-room above deck?

A. Yes, sir, on the main deck.

Q. From the windows of the engine-room can you see out?

A. Yes, sir.

Q. Just state what you observed there?

A. Well, it was blowing pretty hard from the south'ard; I don't know, southeast or south—it was south'ard; it was blowing so hard we were making no headway with this vessel, and we towed as hard as we were able to, and we went in to shore under West Point to anchor, and we anchored her there, and after we anchored her, she dragged, and we went down alongside of her and in maneuvering got the wire hawser in the wheel and threw a rope to which he made fast to the stern and cleared the hawser, and I went ahead again and towed her up to windward and reanchored her; and we left shortly afterwards.

Q. What, if any, conversation did you hear between the captains?

A. I heard the captain of the tug ask him if he thought he was secure, and he said he thought he was; said he was all right.

(Testimony of R. B. Ross.)

Q. When they were hauled up the first time, which anchor did they put out?

A. They put out the starboard anchor the second time.

Q. The first time which anchor was put out?

A. The port.

Q. Did you observe the other ships there in the bay?

A. Yes, sir.

Q. Did you make observations enough so you are able to tell relative to the location of those ships?

A. Not very precisely.

Q. What is your recollection as to the distance as to the space between the ships, whether it was, as to its sufficiency?

Mr. ASHTON.—We object as leading, and also because the evidence given by the witness shows that any testimony from him on this point would be incompetent.

A. Well, from seeing ships anchored there for so many years, I considered it a pretty good position he was in.

Cross-examination.

(By Mr. ASHTON.)

Q. Mr. Ross, how far were you off from West Point, how far out in the Sound were you when you decided to go in there for shelter?

A. Well, I should judge about a couple of miles and a little to the northwest of it, out to the north from it.

Q. It would be more west than north?

A. Yes, sir, I think it would, as near as I could judge.

(Testimony of R. B. Ross.)

Of course, I don't know the exact points of the compass; never looked at it, but as near as I could judge, it was probably a little west of northward.

Q. About west by north?

A. Well, probably it would be nearer west than north, I think.

(Testimony of witness closed.)

Adjournment of further hearing of said matter was taken, to convene for further hearing by agreement of counsel.

Seattle, Washington, 10 A. M.

Friday, February 19, 1904.

Present: Mr. HUGHES, for Libelant.

Mr. KELLY, for Claimant.

Continuation of proceedings as follows, to wit:

Captain REDERICK ALBION HALL ERRATT, produced as a witness for and on behalf of libelant, in rebuttal, having been first duly cautioned and sworn, testified:

Q. (Mr. HUGHES.) What is your business, Captain?

A. I am a seafaring man, am at present captain of the four-masted schooner "Ethel Zane."

Q. What is the size of your ship, Captain?

A. Four hundred and eight tons.

Q. Where do you sail usually?

A. Well, we sail on the coast here; this winter I have

(Testimony of Captain Roderick Albion Hall Erratt.)

been running between Puget Sound and San Francisco and San Pedro.

Q. How long have you been a master mariner?

A. Nine years.

Q. How long have you been at sea?

A. Twenty-four years since I started in.

Q. Have you anchored frequently at Shilshoal Bay?

A. This is my first time within five years—first time in five years.

Q. Your ship is now at anchor there, is it?

A. Yes, sir.

Q. Captain, I wish you would observe this chart, marked Claimant's Exhibit No. 12; on the evening of December 25, 1901, the four-masted schooner "Stimson" was lying at anchor approximately at the place in Shilshoal Bay marked with a cross by the letter "S"; she was lying on the full scope of her chain, 105 fathoms; the three-masted schooner "Corona" was lying approximately at the place marked by the red cross at the letter "C," having out about 60 fathoms of chain, riding to one anchor; the schooner "Mildred" was located at the point indicated by the red cross at the letter "M"; she is a three-masted schooner and was riding at about 65 fathoms of chain—60 to 65 fathoms of chain; that was the relative situation and location of the three ships when shortly after four o'clock on the afternoon of that day, the wind blowing from fifteen to twenty-five miles an hour, the German bark "Robert Rickmers," a four-masted bark

(Testimony of Captain Rederick Albion Hall Erratt.)

of about twenty-two hundred net register, a ship 267 feet in length, in ballast, came to anchor in tow of the tug "Tacoma," at a point approximately at the cross with the letter "R" on this chart; she put out her port anchor with 40 to 45 fathoms of chain; let go her hawser, made fast her compressor or riding chock upon the chain—a device for holding the chain immediately behind the hawse pipe and in front of the windlass; this compressor or riding chock—I use the two names because both are used in the testimony of the witnesses—split, about ten or fifteen fathoms of chain ran out and then the ship began to drag and she dragged down to the schooner "Corona," but without colliding; when she had dragged to that point the tug which in the meantime has been engaged in taking care of the hawser that had been let go, overtook her and made fast to her and started to tow her back; before towing her back what should the "Rickmers" have done with her port anchor in the exercise of good seamanship?

Mr. KELLY.—We object to this question, first, because it has not been shown that this witness is a competent witness to testify as to what or what is not good seamanship under the circumstances; second, because the question does not include all of the facts relative to the position of these vessels and the circumstances under which the anchorage was made; third, for the reason that some of the facts stated in the question are not in accordance with the evidence in the case.

(Testimony of Captain Roderick Albion Hall Erratt.)

A. Well, he ought to have lifted his anchor up—he ought to have hove his anchor up so he could see his anchor, to see whether it was foul or what the matter was with his anchor before he came to anchor again.

Q. State whether or not he should have kept his anchor up while he was being towed back.

Mr. KELLY.—Same objection as above.

A. Why, certainly, he ought to have kept his anchor up.

Q. Why? What would be the danger to the subsequent usefulness of the anchor if he allowed it to drag back? - A. It might have got foul.

Q. Now, assuming that the anchor was not hoisted off the ground, but that the tug towed her back to approximately the place indicated by the cross at the letter "R" and she then put out her starboard anchor with 36 fathoms of chain, having in the meantime hove in on the port anchor after she had dragged the amount of chain that she had run out on the breaking of the compressor, leaving 50 fathoms of chain on the port anchor. What, I will ask you, would be the serviceableness of the port anchor in holding that ship?

Mr. KELLY.—Same objection as before.

A. It would not be any.

Q. Why not?

A. Well, if he had that anchor down when he towed back he did not know whether that anchor was foul or not. Another thing, the anchor—if he towed back to that place

(Testimony of Captain Roderick Albion Hall Erratt.)

again, the anchor must lead aft underneath the vessel, and when he put his second anchor down there was no strain came on the other anchor.

Q. Assuming that the wind was blowing fifteen to twenty-five miles an hour, what would you say as to the sufficiency of the scope of chain under the facts as I have stated them, that is to say, with the starboard anchor out on thirty fathoms of chain and the port anchor out on forty fathoms in the way that I have described it?

Mr. KELLY.—Is it understood, Mr. Hughes, that my objection runs to all these questions without my repeating it each time?

Mr. HUGHES.—Yes, sir.

A. Well, he ought to have had at least sixty fathoms of chain out on that anchor.

Q. On which anchor?

A. On this second anchor that he let go. He ought to have given her at least sixty fathoms of chain where the wind was blowing the way you say it was.

Q. And if the wind increased subsequently during the evening, what, in the exercise of good seamanship, should he have done?

A. He ought to have given her more chain.

Q. What would you say if the weather became worse and the wind increased, as to the seamanship in not taking up the port anchor, examining it and recasting it?

A. I should say it was very poor seamanship. It was carelessness on the part of the master in not doing it,

(Testimony of Captain Rederick Albion Hall Erratt.)

having his mates heave that anchor up, and sight the anchor to see that it was clear.

Q. In riding from two anchors with the wind blowing in squalls and ranging from fifteen to twenty-five miles an hour and increasing later at night, how should the two anchors lead, or how should the ship lead from the two anchors?

A. Well, she ought to lead right behind the anchors—the anchors ought to lead right ahead, rather.

Q. She should tail from the anchors?

A. She should tail from the anchors.

Q. Should the anchors be spread, as they should be under the facts as I have stated them, in order to hold the ship properly and make the two anchors serviceable?

A. Well, generally when there is more chain out on one anchor than the other if you can spread them a little it is better to spread them a little, not too much, because if you spread your anchors too much, why, generally the strain comes more on one chain at one time than it does on the other; if the vessel swings it will come on one chain and when she swings the other way it will come on the other chain; where they lay both ahead, why, the vessel swaying that way (indicating) the strain will come more even on both anchors.

Q. Now, Captain, between ten and eleven o'clock that night, or thereabouts the wind having somewhat increased in velocity the "Rickmers" began to drag and she drifted until she struck the "Mildred," taking off her jib-

(Testimony of Captain Rederick Albion Hall Erratt.)

boom; passing clear of the "Mildred" she continued to drift, changing her course so that she came into collision with the "Stimson," about half-past eleven o'clock; during that period the wind blew in gusts, a high wind, and at the weather observatory in this city, according to the automatic register of the velocity of the wind, it was blowing at from twenty to twenty-five miles with occasional velocity as high as thirty-two and thirty-five miles; under those conditions what, if anything, could the "Stimson" do to clear her, the night being dark and rainy and the wind as I have described it?

A. Well, I don't see as he could do much of anything. He could not—in the first place, if that vessel was dragging he could not tell whether that vessel was dragging or she was sheering; if it was dark and rainy as you say it was—nasty weather like that—the man that was watching, he could not tell exactly until that vessel got pretty close whether that vessel was sheering or whether she was dragging.

Q. Would his own ship sheer? By that I mean the "Stimson"; would it swing on its hawser?

A. Well, it would be hard to sheer her.

Q. I say, would the "Stimson" swing herself—riding at anchor in such a wind would it be swaying back and forth?

A. Now, you can take a vessel, if she was low in the water she would not sheer as much as if she was high out of the water. If that vessel is in ballast she has a high

(Testimony of Captain Rederick Albion Hall Erratt.)

side out; the wind might sheer her; you take a vessel that is low in the water, where the wind could not get any force on her, why, she would not sheer—she might sheer a little and she might not.

Q. After it could be discovered by the watchman that she was actually dragging and likely to come upon the ship, would there be time to do anything aboard that ship in the way of setting sails, assuming that the ship had been loading for fifteen days and her decks were clear as they are in loading lumber?

A. Well, in loading lumber, why, generally there is nothing ever clear; we have to hoist our booms—aboard of them schooners we have to hoist them away up; there is ten or twelve feet from the saddles, and the ropes is always laid up on the pin rails up in the rigging and there is nothing very handy around the decks. We are supposed to have the decks all clear so we can load lumber.

Q. How long would it take to hoist her fore staysail, say, under such conditions, in the night time, with a ship like the “Stimson,” engaged in loading lumber and lying there at anchor?

A. Well, I don't think you could do it in less than twenty minutes anyway. It would depend a good deal on how quick the men would get out for him.

Mr. KELLY.—Now, at this point claimant moves to strike the last question and answer upon the further ground, in addition to the other objections, that it assumes a state of facts not shown in the testimony in this case.

(Testimony of Captain Rederick Albion Hall Erratt.)

Mr. HUGHES.—If you mean about the loading of the lumber you did not hear the testimony. We put in testimony as to how many days she had been loading lumber—fifteen days—and how she had some six hundred thousand feet in her and all that sort of thing.

Mr. KELLY.—There is nothing in evidence as far as I know as to the condition of the “Stimson’s” deck at this time, and I will put my objection in for what it is worth.

Q. Captain, if you had been aboard the “Stimson” and had known that the “Rickmers” was drifting, the weather and time of night being as I have heretofore stated, and if you had had ample time would you have considered it safe to attempt to set any sail?

A. Well, the rudder would not have much effect on the vessel laying that way without there was a strong current. If there had been a strong current there, why, then he could have sheered—probably have sheered his vessel. But as there is not much of any current in that bay there, why, if I had been in his place I would have done just the same as he did himself—laid there. I do not see that he could have done anything else.

Q. Do you think it would have been safe to have attempted to set any sail, and if not, why not?

A. Well, I think if he had set any sail that vessel dragging down on him that way that he was just as liable to fill on the wrong tack as he was on the right; therefore, if he had filled on the wrong tack he would have went into her instead of her coming into him.

(Testimony of Captain Roderick Albion Hall Erratt.)

Q. What experience have you had in handling sailing vessels on this coast?

A. Well, I have been out here since 1889; I have been master of different vessels here for the last nine years.

Q. Sailing vessels?

A. Sailing vessels—all schooners.

Q. And prior to that?

A. Prior to that I sailed mate and second mate in Spreckler employ and in different other employs.

Q. On sailing vessels?

A. On sailing vessels. I ain't no steamship man, my license don't call for it. I am a licensed master in sailing vessels.

Cross-examination.

Q. (Mr. KELLY.) Your experience, Captain, has been with what rigs, mostly? A. Schooners.

Q. Fore and aft rig?

A. Yes, sir; that is, since I have been master. Before I have sailed in a few rigged vessels, not too much of any advantage at all, mostly in schooners all my life. The first trip that I ever made to sea was in a schooner and I like a schooner better than I do a square rigged vessel.

Q. Why?

A. Because I think there ain't so much going aloft and you can get sail on them, there ain't as much work in handling them as a square rigged vessel.

Q. Much easier to handle, are they not?

(Testimony of Captain Roderick Albion Hall Erratt.)

A. Yes, they are a little easier.

Q. Much quicker to make sail and reduce sail or to so maneuver your sail that the vessel may be put in this direction or that direction, than in a square rigged, and they are much easier to come about in a fore and aft rig than in a square rig; is not that true?

A. Yes—well, they come about one as quick as the other one. A square rigged vessel, you have to haul yards, more hauling and pulling to it, but they will come around—one will come around just as quick as the other one will. The only difference is you can handle a schooner with less men than what you can handle a square-rigged vessel.

Q. Suppose that you are dead in the wind; it is a very simple thing, is it not, to veer the vessel's head one way or the other by maneuvering your foresail or fore staysail?

A. You can't do it very well with a fore and aft rig.

Q. But you can do it better with a fore and aft rig than with a square rig, can you not?

A. If you are dead in the wind she will go which way she has a mind to. In a head wind hauling her spanker over will pull her around.

Q. How about hauling her fore staysail over to windward; will that pull her around?

A. Sometimes it will and sometimes it won't. If there is any wind in the spanker it won't have any ef-

(Testimony of Captain Roderick Albion Hall Erratt.)

fect, because the pressure will bring her up against it, put her around on the other tack.

Q. Suppose that there is no sail set except a fore staysail; what would be the effect of pulling the fore staysail over to windward?

A. Well, the effect would be that she might go the right way and might go the wrong way.

Q. Explain that, if you will; how might she go the wrong way?

A. Well, in getting under way in a vessel you would naturally heave your anchors short, you would set your sails—set your staysail; you haul your spanker in the opposite way, whichever way you want to go, or the way that you want to go, and you haul your staysail the opposite way and you station your men by the jibs; as soon as your anchor is off the bottom and you see that the vessel has sheered, why, you run the rest of your head sails up, but you cannot do that with headsail without you have aftersail; you have got to have headsail to work against the headsail to get the right tack.

Q. That is when you are hove short?

A. That is when you are hove short and getting under way.

Q. Now, do I understand you to say, as a seafaring man, that assuming that a vessel is lying at 105 fathoms scope of chain with no sail set upon her at all, that if you put her fore-staysail or some part of it on the ves-

(Testimony of Captain Roderick Albion Hall Erratt.)

sel and haul it over to windward that you can't tell which way the bow of that vessel is going to run off?

A. No, sir, you can't.

Q. You are satisfied with that answer?

A. Yes, sir.

Q. Are you familiar with the "Stimson"?

A. This is the first time that—well, last trip I went out past the Cape with him at the same time.

Q. You have seen the vessel?

A. I have seen the vessel at a distance.

Q. How is she built? Is she sharp forward or is she bluff in the bows?

A. Well, I have never been close enough to her to tell.

Q. It would make some difference in your answer, then, as to how far this forestaysail could have been pulled over to windward?

A. Yes.

Q. That would make some difference, would it not?

A. Yes.

Q. Now, you spoke of the danger of setting a sail; what would be the particular danger, under the circumstances of the question that was put to you, of putting a fore staysail, or some part of it, upon the "Stimson" under the circumstances in which she was at that time?

A. Well, as I say, she might sheer the wrong way.

Q. That is the only danger, then?

A. Yes.

Q. That you spoke of?

A. That is the only danger.

(Testimony of Captain Rederick Albion Hall Erratt.)

Q. And if that was a danger which was not ordinarily to be apprehended it would have been reasonably safe? What would you say to that, it would have been reasonably safe except for the danger of sheering the wrong way?

A. Well, yes, it would be; that is, about the only danger that I can see it, that the vessel might sheer the wrong way and instead of clearing him—clearing the other vessel—he might strike the other vessel instead of the other vessel striking him.

Q. Even under your idea of the effect of a fore stay-sail under those circumstances there would be an even chance that she might sheer the right way, would there not?

A. Well, generally—twice out of three that she will go the wrong way.

Q. That is your experience?

A. That is my experience; and with most everything else. If you want to do anything, why, generally you think you are going to be right and instead of that you are wrong.

Q. Well, if you were a philosopher instead of a sea captain then you would be inclined to be a pessimist. If you saw a vessel some six or eight times your size dragging down upon you in the night-time with the danger of collision imminent, do I understand you to say that you would not have considered it good seamanship

(Testimony of Captain Roderick Albion Hall Erratt.)

to take the chance that the vessel might sheer the right way to avoid a collision?

A. Well, if you had seen her in time so as to have plenty of time to get your men out and do something, why, it would be good seamanship to try to do something.

Q. To try to do something? Exactly.

A. But if you have not got the time, why, it is your place to hold on.

Q. Certainly.

A. And stay where you are.

Q. How much time would be necessary to adopt the chance which we have been talking about?

A. Well, it would depend according to what condition the vessel is in. If the vessel is the same as a vessel loading lumber there and everything is all cluttered up there and you can't tell which is which or what is what, why, it would need more time.

Q. How much time?

A. Well, it would take at least three quarters of an hour anyway to get your men out and get things straightened so you could get hold and get some sail on anyway.

Q. I understand you to say, then, that under the circumstances of the case as it has been set forth in the question put to you that in your opinion it would have taken the "Stimson" three-quarters of an hour to have attempted to set her fore staysail?

(Testimony of Captain Roderick Albion Hall Erratt.)

A. Not the fore staysail.

Q. Well, that is the sail I am talking about.

A. If it was only the fore staysail alone that he would get on, why, if his men got out, why, it would take at least twenty minutes anyway.

Q. He could do it in twenty minutes, could he not?

A. Well, I think I could. It would depend a good deal on what kind of a crew I had.

Q. Well, with an ordinary crew, under those circumstances you think that you could get a fore staysail up so that you could maneuver it inside of twenty minutes?

A. Yes, I think I could.

Q. Are you familiar with the tides in Shilshoal Bay?

A. Well, as far as I know about them there is not much tide in that bay from my experience.

Q. Do you know what the run of the tide ordinarily is there?

A. No, I don't know exactly what is the run of the tide.

Q. Well, have you any impression upon the subject?

A. Well, I don't think it—in and around the point there, if you lay pretty close in, you don't get much tide at all to amount to anything.

Q. Taking the position of the "Stimson" here as indicated on the chart (pointing on Claimant's Exhibit No. 12)) what, in your opinion, is the force and strength of the ordinary tide there?

(Testimony of Captain Roderick Albion Hall Erratt.)

Mr. HUGHES.—You are speaking, of course, of the current now?

Mr. KELLY.—I am speaking of the current, yes, sir, as it shifts with the tide.

A. Well, it would depend a good deal on how full the tide has advanced.

Q. I am not asking for an opinion now, Captain; I am asking you for what you know of the facts.

A. Well, if it is half tide there, why, the tide runs stronger and it would be—

Q. How much would it run at half tide?

Mr. HUGHES.—That is immaterial—all this is immaterial—it being an undisputed fact in this case that it was low tide, according to claimant's own proof.

A. Oh, I suppose about a mile an hour.

Q. I understood you to say, in answer to a question which Mr. Hughes put to you, that the "Stimson" would swing at her anchor, lying as she did, more if she were in ballast than she would if she were loaded or partly loaded?

A. Yes.

Q. That is true.

A. A vessel is liable—the higher out of the water she is the more force the wind would have on her.

Q. Then the amount with which she swings at her anchor—the distance through which she swings—and the rapidity with which she swings depends upon the amount of surface which is exposed to the wind, does it not?

(Testimony of Captain Rederick Albion Hall Erratt.)

A. Yes, it would depend upon the wind. If she had a high side as—you take that vessel lying out there in the bay now; you take a vessel that was not any higher, or not more than half as high, as that vessel is that is lying there, why the wind would not have as much force on her—that vessel would sheer more than a vessel that is lower.

Q. What I have said is true, then—it is the amount of surface which is exposed to the wind which determines how much and how quickly a vessel will swing when she is at anchor? A. Yes.

Q. That is true, is it not? A. Yes.

Q. Then, if the fore staysail were put up, the vessel, although she might be heavily loaded, although she might be fully loaded and at anchor, it would swing or veer from side to side quicker than she would if her fore staysail were not set; is not that true?

A. A vessel that is loaded?

Q. Yes?

A. She would not swing as quick as a vessel that is light.

Q. That is true; but the amount or distance through which she swings and the amount of her swing and the rapidity of the swing depends on how much surface is exposed to the wind, does it not? You have just said so. A. Yes, sir.

Q. Then, if you expose more surface to the wind by hoisting a sail, the vessel will swing to one side or the

(Testimony of Captain Rederick Albion Hall Erratt.)

other, as the case may be, more than if the sail were not hoisted, will she not?

A. She will if you put the right sail on her.

Q. Well, what would you consider to be the right sail in order to get her to swing that way?

A. Well, I should want some aftersail as well as headsail on her to get her to swing the right way.

Q. But the hoisting of a headsail alone or the hoisting of an aftersail alone would have a tendency to make her swing, would it not?

A. Yes, it would help—the aftersail would, but the headsail—as I say, with the headsail she would be liable to go on the wrong tack—just as liable to go on the wrong tack as she would on the right without she had aftersail.

Q. The “Stimson” was a four-masted schooner, was she not? A. Yes.

Q. You call the aftersail on a four-masted schooner the spanker or staysail?

A. The aftersail on a four-masted schooner is called a spanker.

Q. And the mast is the jigger mast?

A. The spanker mast.

Q. It is not customary to carry deckloads on four-masted schooners or anything abaft of the spanker mast, is it?

A. According to how the vessel is built and how she trims.

(Testimony of Captain Rederick Albion Hall Erratt.)

Q. What is the usual custom?

A. Well, I guess it is about six of one and half a dozen of the other. Some vessels you get in you have to. Now, my vessel, I have to run my lumber as far aft as I can all the time, keep it aft, because she goes down by the head very easy.

Q. Do you carry a deckload then customarily abaft of the spanker mast?

A. Carry a thirteen foot deckload.

Q. Abaft of the spanker mast?

A. I carry from the main deck to the top of the deckload, that is about thirteen feet; I generally have to run the ends of my lumber aft within six inches of the house; that goes about a foot abaft the mast until I get up above the house; when I get up above the house then I have to get aft further.

Q. On the top of the house?

A. On the top of the house.

Q. You do not know whether that was the custom on board the "Stimson" or not?

A. No, sir, I do not. I never have been aboard the "Stimson," never had my foot aboard of her.

Q. The staysail has not any boom, has it, the fore staysail?

A. The fore staysail on these big vessels always have a boom; on a small vessel—

Q. It is not a boom like the boom on the mainsail or

(Testimony of Captain Rederick Albion Hall Erratt.)

staysail, it is a mere pole running along the foot of the sail?

A. It is quite as big, but it is a boom, but it is not quite as large.

Q. Now, you were discussing with Mr Hughes the proper method of anchoring a vessel, if she could do so, should anchor with her anchors lying fore and aft so that they tail up with the vessel; is that right?

A. I say that the chains, where the anchors is not spread too much, the more they lay ahead the more even strain will come on both anchors.

Q. The more they lay ahead, but did I not understand you to say they should not be spread?

A. I say that to spread them a little, not too much.

Q. Well, will you tell me how much that spread should be, in your opinion, and how the anchors should be placed for the greatest security?

A. Well, twenty feet apart is plenty.

Q. It makes no difference how big the vessel is?

A. No, it doesn't.

Q. Over twenty feet you would not advise?

A. No.

Q. I want to ask you, Captain, if the "Rickmers," situated generally as indicated upon this chart, were to drag down a distance of about twice her own length on to the schooner "Mildred," following the schooner in such a manner as to get athwart her hawser, carry away her jib-boom and top hamper chain forward, the

(Testimony of Captain Rederick Albion Hall Erratt.)

circumstances of the wind and weather being such as has been described to you in the previous questions, whether that could have happened without creating a good deal of disturbance and noise?

Mr. HUGHES.—I object to that as incompetent.

A. Well, it might cause a good deal of noise, hollering and one thing and another, and it might in some cases—some men might take it cooler than others would and might not cause any disturbance at all. Some men might stand there and give their orders and not make any noise about it at all, where other men would get so excited that they would not know what to do only just holler and shout.

Q. Would it not have necessarily created some disturbance for one vessel to come athwart of another in that way so as to break out her jib-boom and carry away her top hamper?

Mr. HUGHES.—Same objection.

A. Why, yes, the breaking of the wood—

Q. And necessarily would, would it not?

A. Why the boom, of course when it would break it would cause some noise.

Q. Now, when vessels are foul of each other in that way it usually takes some time for them to break apart, does it not?

Mr. HUGHES.—Same objection, that it is incompetent and immaterial.

(Testimony of Captain Roderick Albion Hall Erratt.)

A. Sometimes it does and sometimes it don't, according to how the vessel would strike. If she struck the other vessel in such a way as to just knock the jib-boom out of her and swing clear of her, why, it would not take much to get clear, she would naturally swing clear herself. Of course if she got athwartships of the vessel and carried away her jib-boom that way, why, then, it would be a good deal of trouble to get clear of one another.

Q. Under either of those circumstances there would be more or less disturbance and noise about there, would there not?

Mr. HUGHES.—Same objection.

A. Well, as I said before, that it might with some men and other men it might not.

Q. Now, assuming that the vessels lie in the position as indicated upon the chart and that from the time that the "Rickmers" was in collision with the "Mildred" to the time when she first came into collision with the "Stimson" that not less than a half hour expired: What should you say would have been the duty of a competent, careful and vigilant lookout upon the "Stimson" under those circumstances as to notifying his superior officer of what was going on?

A. Well, if he is in that way as you say, if the man is a good man and you could depend upon him, and he could see that that vessel was dragging and was sure

(Testimony of Captain Roderick Albion Hall Erratt.)

of it, why, it was his place to call the officer or the captain, which ever he was told to.

Q. Which ever was in charge of the vessel?

A. Yes.

Q. And could a collision of the kind which I have described with the consequent carrying away of the top hamper, and so forth, between the "Rickmers" and the "Mildred" have occurred, the vessels being in the proximity as indicated her on the chart, without having been a warning to a careful, competent and vigilant lookout that there were matters happening to windward of him which required the attention of his superior officer?

A. Well, if it was a very bad night, as they say here, why, a good many things could have happened that the man on the lookout there would not know anything about. If it had been good, clear weather where a man could see, why, he ought to have been able to see that distance to see that there was something wrong, but if it was a night as stormy and black, where a man can't make out things, can't see very plain, why, a man couldn't do much—couldn't tell exactly what was going on.

Q. He could hear what was going on, could he not?

A. It is according to how the wind would blow.

Q. Well, he is here to leeward?

A. Well, you can be to leeward and you can't hear—if it is blowing hard. I have had my mate aboard the

(Testimony of Captain Rederick Albion Hall Erratt.)

vessel very often—something would carry me away forward and I have had him rush forward and I would sing out to him and ask him what it was that carried away, and I could not make out what he would say to me, I would have to go forward to him myself and find out.

Q. You think the same rule would hold as applied to the noise and disturbance occasioned by a collision between two vessels, that it would not be heard to leeward here?

A. Not if it was very bad weather and blowing very hard, I do not think it could be heard that distance.

Q. Well, take the circumstances of the weather as it had been put to you in the questions heretofore, what would you say?

A. Well, the way the weather has been described to me, I do not think a man could hear that distance.

Q. Well, assuming that he could hear, what would you say as to the vigilance and competency of a lookout who failed to notify his superior officer of the collision between two vessels to windward of him for twenty-five minutes after it occurred?

A. Well, in that case I should say that he did not keep a very good lookout, if he did hear it.

Q. You are lying in Shilshoal Bay now, I understand, Captain?

A. Yes, sir.

Q. Where are you lying?

A. I am lying in nine fathoms of water.

(Testimony of Captain Roderick Albion Hall Erratt.)

Q. Can you indicate on the chart here (referring to Claimant's Exhibit No. 12) about where it is?

A. Yes, I can give you pretty near (indicating on chart). Here is about where I think I am laying, down here (pointing) where I am to anchor.

Q. Indicate with a pencil on here, if you please.

A. About there (marking on chart).

Q. What is the name of your schooner?

A. The "Ethel Zane."

Q. Mark it with an "E." (Witness marks as requested.) How long have you been lying there, Captain?

A. I came in here on the 6th and I laid out there the 6th, 7th and 8th; then I went inside, took in part of my cargo and I towed out there Tuesday morning again.

Q. Are you lying at one anchor or two?

A. I am lying at the present time at two anchors.

Q. When you first went in there how many anchors did you lie to?

A. I had one anchor down first and I dropped the second one afterwards.

Q. How much later?

A. I dropped the second anchor, I think it was—I came to anchor there about twelve o'clock at night—between twelve and one, I think it was, and somewhere about two o'clock in the morning I dropped the second anchor under foot.

Q. Dropped your port anchor first?

(Testimony of Captain Roderick Albion Hall Erratt.)

A. Yes, I dropped the port anchor first.

Q. How much scope did you give the port anchor?

A. I gave her sixty fathoms.

Q. When you first dropped your anchor?

A. Yes, sir.

Q. How much scope did you give the second anchor?

You just dropped that under foot, you say?

A. I just dropped that under foot.

Q. Then you were substantially lying at one anchor?

A. I dropped that for safety's sake in case she dragged I would have my other anchor down to bring her up with.

Q. And during the time you were lying there you let out sixty fathoms all the time?

A. When I towed out Tuesday, why, I let go my starboard anchor because it is the biggest anchor, and last night it came on to blow, about twelve o'clock last night it started in to get squally, I dropped my other anchor under foot and gave her a little more chain on the starboard anchor so as to have some scope on the port one. I think there is about eighty-five fathoms out on the starboard anchor now and there is a little over—well, there is about thirty fathoms on the port. That is the condition I left her in this morning and she has been in that condition since last night about midnight—between twelve and one o'clock it started in.

Q. Now, Captain, assuming that the wind is sou'west by sou'magnetic—that is about it—and you were to

(Testimony of Captain Roderick Albion Hall Erratt.)

come to anchor at the point indicated by the mark "R" upon this chart (referring to Claimant's Exhibit No. 12), with a vessel lying astern of you in the distance indicated there, your own vessel being over two hundred and fifty feet in length, as I think the testimony is: Under those circumstances would you have considered it advisable to have paid out sixty fathoms of chain when first coming to anchor?

A. Well, if I had room enough there, I would certainly give her sixty fathoms.

Q. If you did not have room enough, what would you do?

A. If I did not have room enough, why, I would never let go of my towboat?

Q. If you did not have room enough and you were obliged to drop anchor there, what would you do, would you give her sixty fathoms?

A. A man as long as he has got a towboat is not obliged to anchor.

Q. That is not the question; that is a question of law we will discuss afterwards, but I am assuming now that is the anchorage pointed out to him and he is compelled to anchor there; under the circumstances, the "Corona" lying as she did there, would you have given the "Rickmers" sixty fathoms of chain?

A. If I had no towboat there I would have given more chain.

Q. I understood you to say, then, that with a vessel

(Testimony of Captain Roderick Albion Hall Erratt.)

the size of the "Rickmers" lying here that you would have given her more chain? A. Yes.

Q. With the "Corona" lying astern of her as she did?

A. Yes.

Q. How much ought you to swing clear of the "Corona" under those circumstances, how much clear seaway ought there to have been between the stern of the "Rickmers" and the bow of the "Corona" in order to be safe?

A. Well, there ought to be room enough there to give her sixty fathoms of chain.

Q. That is not the question I asked you; sixty fathoms of chain seems to be a standard by which you judge things. A. No.

Q. But that is not the question. How much clear space ought there to have been between the stern of the "Rickmers" and the bow of the "Corona," how much would good seamanship require?

A. Well, good seamanship, why, of course the farther a man the more swinging room he can get, why, the better it is for him.

Q. What is the minimum?

A. Well, if the man can get a couple of hundred feet he ought to be safe enough.

Q. It ought not to be less than two hundred feet, then, I understand you to say?

A. Well, a hundred feet even would do—a hundred and fifty feet.

(Testimony of Captain Rederick Albion Hall Erratt.)

Q. A hundred and fifty feet would be ample, you think?

A. Yes. That is, if he had two hundred feet left between the two vessels when he first came to anchor he had room enough to give her enough chain to give her sixty fathoms of chain.

Q. Well, I am asking you now, and I wish you would answer this one question and no other, how much would good seamanship require that the distance should be between the stern of the "Rickmers" and the "Corona" at that anchorage at that time and place?

A. Well, it would depend upon a good deal—a good many circumstances. In good seamanship a man ought to have five or six hundred feet, at the least. I think I should want that much, in my judgment, and that a man hadn't ought to have any less than that.

Q. Now, I will ask you to make what measurements may be necessary for the purpose of answering this question and then to say to me whether in your opinion it would have been good seamanship for the "Rickmers" to have run out sixty fathoms of chain when she first came to anchor in the position which she did, the "Mildred" and the "Corona" being in the position indicated on that chart.

MR. HUGHES.—I do not think we have any dividers, but it has been stated in evidence repeatedly that it was three-sixteenths of a mile, or 1142 feet, between the two ships.

(Testimony of Captain Rederick Albion Hall Erratt.)

Q. Now, assuming, as shown here in the evidence, that the length of the "Rickmers" exceeded 250 feet, what should you say as to the amount of chain that the "Rickmers" should have paid out?

A. Well, when he first came to anchor he had three-sixteenths of a mile, over 1100 feet—

Mr. HUGHES.—Eleven hundred and forty-two feet.

A. (Continued.) Well, he had plenty of room to come to an anchor with sixty fathoms of chain.

Q. Now, Captain, when the "Rickmers" first brought up to her anchorage, you said, in answer to a question by Mr. Hughes, that, having come to the anchorage under the circumstances as put to you at that time, having clamped her chain upon the port compressor block, the block having split and carried away, so that the chain ran loose and some ten or fifteen fathoms of chain having run away, that good seamanship required that the "Rickmers" should overhaul her chain and take up her port anchor and examine it before dropping it again; is that correct?

A. He says that the towboat took hold of him before. If the towboat took hold of him again, as soon as the towboat got hold of him it was his place, I should think, to lift that anchor up and look at it to see whether it was foul or not. I think that is any master's place, to do such a thing, and I think if he did not do it, it was carelessness on his part. If he got into any scrapes through it, why it would be carelessness on the part of

(Testimony of Captain Rederick Albion Hall Erratt.)

the master in not ordering the mate to lift that anchor and look at it to see if it was not foul.

Q. What were the circumstances which would make it probable or possible that the anchor or the chain had been fouled? By the mere fact of the compressor block having carried away and the chain having run away for ten or fifteen fathoms?

A. That anchor might have got foul when they dropped it. Very often when you drop an anchor it will get foul in dropping it.

Q. The liability that it would be foul was not increased by the fact that the compressor block carried away, was it? A. No.

Q. Not in any way; then, how is a master ever to know that his anchor is not foul? I understand you to say that it fouls in dropping?

A. Yes, it is liable to foul in dropping the anchor.

Q. Well, if it is liable to foul in dropping the anchor, does good seamanship require the captain to hoist his anchor and look at it to see if it is foul?

A. No, it don't in a case where a man drops his anchor. He is supposed to be always on the lookout, and he can tell after a while whether that anchor is foul or not—he can judge pretty near whether it is foul or not. If it holds all right, why, he can say that anchor must be clear.

(Testimony of Captain Rederick Albion Hall Erratt.)

Redirect Examination.

Q. (Mr. HUGHES.) But if the ship drags?

A. Why, a man would think that his anchor is foul.

Q. Now, Captain, in coming to anchor in tow of a steamer, does the master or mate on the deck of the ship have a better opportunity than the master of the tug towing him to determine whether he has clear way between his ship and the other ships anchored about?

A. Why, certainly. The man that is aboard the ship, he ought to be able to see whether he is clear of the other ships better than the captain of the tugboat, because the captain of the towboat would naturally be ahead of him.

Q. Would it be proper, after casting off the line of the towboat to let your ship get sufficient sternway before putting out your anchor and making fast your riding chocks so that your riding chock would break?

Mr. KELLY.—That is objected to under the same objection as before, and particularly because it assumes a state of facts which is not supported by the evidence.

A. Well, he hadn't ought to have allowed his vessel to get too much sternway before he let go his anchor. As soon as he let go of his line on his towboat he ought to have dropped his anchor as soon as he saw the vessel stop her headway.

Q. Now, observe this chart again, Captain (referring to Claimant's Exhibit No. 12): If, when the "Rickmers" drifted down on to the "Mildred" and carried away her

(Testimony of Captain Roderick Albion Hall Erratt.)

jib-boom, the noise was not sufficient to be heard on board the "Corona," would you say it would be likely to be heard on board the "Stimson" on the same night—the same time?

Mr. KELLY.—The same objection that I made before to this question.

A. No, I don't think it could.

Q. And if the wind was blowing from 25 to 35 miles an hour, on a dark night, would the mere carrying away of the jib-boom of the "Mildred" be likely to be heard on board the "Stimson"?

A. I hardly think it could be heard that distance.

Q. Would the lookout on such a night be able to see that there was anything wrong there?

A. Well, he might be able to see that there was something wrong, but not able to tell what it was. He might not be able to make it out—make out the vessels—to tell whether they were foul on one another or not. He might think the vessels were swinging or something like that—had come close to one another.

Q. Now, would he be able to tell that the "Rickmers" was drifting, until she got pretty close to him on a dark, stormy night, the wind blowing like that?

A. Well, he could not tell until she got down half of that distance, anyway, I don't think. If he could make out the vessel plain enough, why, it would be a different thing; but a dark night, like that, why, it is deceiving. A man may run in on a tack close to the

(Testimony of Captain Roderick Albion Hall Erratt.)

beach, and he may think he is right on top of it, and at the same time he might be ten miles away from it.

Q. If the "Rickmers" were drifting down onto the "Stimson," under the conditions of wind and weather that I have described, which vessel would have the better opportunity to get clear of the other, the "Rickmers" or the "Stimson," if anything could be done in the way of using sails; that is, if the weather was such as to permit anything to be done in the way of using sails.

A. Well, if the vessel that was dragging knew that he was dragging, why, he ought to have tried to hoist some of his after sails, so as to swing his stern clear.

Q. Would he have a better opportunity than the "Stimson" would?

A. He would, because he would know himself that he was dragging, while the "Stimson" would not know—the other vessel would not know whether he was dragging or not, probably.

Recross-examination.

Q. (Mr. KELLY.) If the "Rickmers" had her riding lights burning in good order, it would have been comparatively easy for a lookout to have determined whether the ships were in difficulty or not, would it not?

A. Well, if it is a dark night, he might or he might not. As I say, it would depend a good deal upon the weather in that case. The man might think that the vessel was swinging.

(Testimony of Captain Roderick Albion Hall Erratt.)

Q. He could determine, could he not, whether the "Rickmers" was dragging if her riding lights were in good order?

A. If she came very fast he could tell that she was dragging, or something the matter there. If he saw that light coming and saw the light, why, he could see that there was something coming along there.

Q. A competent lookout and seaman would be able to detect that from the fact that he had a fixed light on West Point, would he not, and therefore a cross bearing between that light and the light of the vessel that was dragging and the fixed light on West Point would enable him to determine whether the vessel was dragging or not?

A. Well, he would not really need the light on the point there to tell whether the vessel was dragging or not. If he saw that light coming towards him, why, he could tell that way—if he saw the light coming.

Q. Captain, in coming to an anchorage, where a vessel is under pilotage and the captain of the vessel is unfamiliar with the waters, whose duty is it to pick out the anchorage? A. Why, it is the pilot's duty.

Q. (Mr. HUGHES.) Captain, whose duty is it to designate whether or not there is sufficient scope of anchorage between the ship coming to anchor and the other ships at anchor?

A. Whose duty would it be?

Q. Yes, sir, under those same circumstances.

(Testimony of Captain Roderick Albion Hall Erratt.)

A. Well, the captain can object to his anchorage; if he don't like it, he has the privilege of objecting to it and making the pilot take him to a different anchorage.

Q. And if, in coming in a place like this, the master of the ship felt that he had not sufficient scope between his ship and the other ships at anchor, to ride safely, what would be required the master of the tug to do?

A. Well, he could require the master of the tug to take him further ahead into a different anchorage.

Q. To give him more scope?

A. Give him more room to swing in.

(Testimony of witness closed.)

GEORGE N. SALYSBURY, recalled as a witness for and on behalf of libelants, in rebuttal, testified:

Q. (Mr. HUGHES.) You have testified before in this case, Mr. Salysbury? A. Yes, sir.

Mr. HUGHES.—I now offer in evidence a certified copy or transcript of the automatic wind velocity and direction record of the United States weather station at Seattle, duly certified by the Secretary of Agriculture.

(Copy referred to offered in evidence, marked for identification as Libelant's Exhibit "H," and returned and filed herewith.)

Q. You testified before that the automatic record made by the instruments in your office, that is, the original record, had been forwarded to Washington?

A. Exactly.

(Testimony of George N. Salysbury.)

Q. I will ask you if this is a copy of so much of the record as shows the record between the hours of four o'clock, local time, and twelve o'clock midnight, local time, on the 25th day of December, 1901?

A. Yes; this is a copy of the automatic record of wind velocity and direction at the city of Seattle, Washington, station, between the hours of four P. M., December 25th, and midnight, December 25th, 1901.

Q. I wish, Mr. Salysbury, you would interpret that chart; that is to say, examine the chart and state what was the wind velocity and the direction of the wind, commencing at four o'clock P. M. of that day and continuing until midnight.

A. Well, if I might, before answering that question, say that in my testimony formerly I gave the average velocity, not having this record before me, between the different hours, as stated at that time.

Q. Yes, sir; now, I want you to give the specific velocity. A. At any exact time?

Q. Yes, sir.

Q. (Mr. KELLY.) How often are these records read? Is this one of these cylinder records that take it from time to time, or is it taken at all the time?

A. It is a continuous automatic record.

Q. (Mr. HUGHES.) Now, go on, commencing at four P. M.

A. Would you like the velocity at the exact time of four P. M.?

(Testimony of George N. Salysbury.)

Q. Yes, sir.

A. And at five and six and so on?

A. Yes, sir.

A. The velocity of the wind at four P. M. was fifteen miles per hour from the southeast; at five P. M. it was sixteen miles from the southeast.

Q. What was the highest velocity between those hours, four and five? A. Eighteen miles per hour.

Q. What changes of wind was there between those hours?

A. It was from southeast to south, a part of the time from the south—about one-half of the time from the south and about one-half of the time from the southeast; a few switches to the southwest for a minute at a time.

Q. What was the velocity at six P. M.?

A. At six P. M. the velocity was twelve miles an hour.

Q. What was the highest velocity between five and six?

A. I believe there was nothing higher than eighteen miles per hour between five and six.

Q. Give me the directions of the wind between five and six.

A. It was mostly from the southeast and some short intervals south and southwest.

Q. What was the velocity at seven P. M.?

A. At seven P. M. it was about fourteen miles per hour.

(Testimony of George N. Salysbury.)

Q. What was the highest velocity between six and seven?

A. The highest velocity was about sixteen miles.

Q. What were the directions of the wind?

A. The direction southeast, mostly, during that time.

Q. Give the variations, if any.

A. Well, at five to ten minutes past six it was from the south, and about eleven or twelve minutes past six there was one minute that it was from the southwest; at 6:35 it was from the south for two or three minutes, and at 6:41 there was one minute from the southwest.

Q. What was the velocity at eight?

A. At eight P. M. the velocity was twenty miles per hour.

Q. What was the highest velocity between seven and eight?

A. It was twenty-four miles and occurred at 7:50, and from the southeast, the direction was.

Q. How did the wind vary from seven to eight?

A. It was mostly from the southeast. There were two or three minutes from the southwest at 7:22; from 7:22 on to 7:25 there were about three minutes from the southwest.

Q. What was the velocity at nine P. M.?

A. It was about seventeen or eighteen miles per hour at nine P. M. from the southeast.

Q. What was the highest velocity between eight and nine?

(Testimony of George N. Salysbury.)

A. About twenty-one miles per hour from the south-east; that occurred at 8:50 P. M.

Q. What was the velocity at ten P. M.?

A. Eighteen miles per hour from the southeast.

Q. What was the highest velocity between nine and ten?

A. That would be about twenty or twenty-one—about twenty-one miles an hour, from the southeast, at 9:30.

Q. What directions did the wind blow from nine to ten?

A. Well, generally southeast; there were a few intervals of south and southwest.

Q. Now, Mr. Salisbury, I wish you would give the entire record between ten and eleven.

A. Well, at ten o'clock, as I said, the wind was eighteen miles from the southeast; it continued southeast during most of that time; at ten seventeen there was one minute from the southwest; there were a few minutes from the south during the next quarter of an hour; the velocity was increasing; it reached its maximum at 10:35.

Q. What was that?

A. That was twenty-two miles per hour.

Q. Proceed from 10:35 to 11.

A. Well, the wind was from southeast to south, a few minutes of southwest.

Q. At what time from the southwest?

(Testimony of George N. Salysbury.)

A. The most of the southwest occurred at just about that time of the maximum velocity.

Q. At 10:35?

A. At 10:35 to 10:45—10:35 to 10:40 was when the southwest occurred.

Q. Then after that, from 10:40 to 11, how did the wind blow?

A. Well, it diminished somewhat, so that at 11 o'clock—it diminished until just five minutes before 11.

Q. To what did it diminish five minutes before 11?

A. Twenty miles an hour. And then between five minutes before 11 and 11, it increased and became twenty-four miles an hour.

Q. At 11? A. At 11 o'clock.

Q. How was the wind blowing the last ten or fifteen minutes before?

A. Well, it was changing between southeast and southwest; part of the time southeast and part of the time south, and in that last five minutes before eleven two of the five minutes before eleven were recorded from the southwest.

Q. No, go on from eleven; at eleven o'clock you say the wind was what?

A. The wind was twenty-four miles per hour.

Q. State what it was from that on until twelve.

A. Well, during the next five minutes it was twenty-

(Testimony of George N. Salysbury.)

four; during the next about twenty-three and then twenty-four and died down during the next ten minutes.

Q. To what?

A. To about 20 miles an hour; increased again to twenty-four between 11:25 and 11:35, twenty-four miles; that was from the south to the southwest; between 11:25 and 11:30 the wind was mostly from the southwest and from there until midnight it was mostly from the southwest, increasing to a maximum velocity of thirty-three miles an hour between 11:35—no, between 11:32 and 11:40—with a maximum velocity of thirty-three miles per hour with an extreme of thirty-five miles an hour for one minute.

Q. At what time was the extreme of thirty-five miles per hour reached?

A. The time of the extreme thirty-five miles per hour for one minute was 11:38 to 11:39.

Q. How did it continue from then until midnight?

A. Somewhat diminishing velocity and somewhat irregular. During the five minutes from 11:40 until 11:45 it diminished to about twenty-three miles an hour, then increased to about thirty miles, and during the next five minutes, then during the following ten minutes of midnight there was an average velocity of about twenty-five miles per hour.

Cross-examination.

Q. (Mr. KELLY.) What direction do you record?

A. The true meridian.

(Testimony of George N. Salisbury.)

Q. That is, you take the compass bearing and make the correction of the variation?

A. The instrument is adjusted to the true meridian always, not the magnetic.

(Testimony of witness closed.)

Captain HENRY A. SMITH, a witness produced by libelant in rebuttal, having been first duly cautioned and sworn, testified:

Q. (Mr. HUGHES.) What is your full name?

A. Henry A. Smith.

Q. What is your business?

A. Master mariner.

Q. How long have you been a master mariner?

A. Twenty-eight years.

Q. And in what ship are you now?

A. The schooner "Maweema."

Q. How long have you been sailing in these waters?

A. I have been sailing here about eighteen years, and as master about sixteen or seventeen.

Q. Have you anchored frequently in Shilsboal Bay?

A. I have been there frequently, yes, sir; not within the last few years, but previous to four years ago.

Q. Now, Captain, on the afternoon of December 25th, 1901, the "Stimson" lay at anchor at the point indicated on this chart, Claimant's Exhibit No. 12, by the cross and the letter "S"; the "Corona" at the point indicated by the cross and the letter "C"; the "Mildred" at the

(Testimony of Captain Henry A. Smith.)

point indicated by the cross and the letter "M"; the bark "Rickmers," about four o'clock on that afternoon, was brought into a place of anchorage at approximately the point indicated by the cross and the letter "R"; she was brought there by the tug "Tacoma"; the wind was then blowing somewhere from fifteen to twenty-five miles an hour; she cast off her tow line and put out her port anchor; upon making fast her riding chock the block split and some ten or fifteen fathoms of chain ran out and she began to drag; she continued dragging until she came down opposite the schooner "Corona," where the tug overtook her and made fast. I will ask you to state, in the exercise of good seamanship, what the "Rickmers" should have done with her port anchor before being towed back to anchorage.

Mr. KELLY.—I interpose the same objection to this question as was interposed to the testimony of the preceding witness. With the understanding that the same objection runs to all the questions which are put to this witness I will not consume the time by repeating my objection after each question.

Mr. HUGHES.—Yes, that is understood.

A. In my opinion after the boat got hold of the ship again he should have hove his anchor up and sighted it to see whether it was foul or whether anything was wrong with it.

Q. I will ask you to state whether it would be good

(Testimony of Captain Henry A. Smith.)

seamanship for him to allow his anchor to remain on the bottom while he was being towed back to anchorage.

A. In my estimation, no.

Q. Why not?

A. Well, in the first place, he might foul his anchor; with that large boat towing his anchor he might foul it with something and break his chain or break a fluke or a stock—something like that.

Q. If he was towed back without lifting his anchor off the ground and brought to a position indicated by the cross at the letter "R," and thereupon cast out his starboard anchor, in what direction would his port anchor lie?

A. Do you mean at the time he let his starboard anchor go, or when he had paid out his chain on the starboard anchor?

Q. Well, assuming that he let go his starboard anchor and paid out thirty fathoms of chain.

A. With the wind from the southeast?

Q. With the wind from the south to the southeast.

A. Well, I should judge that his anchor must be trending aft, not directly in line with the vessel but quartering.

Q. What strain, if any, would come upon the port anchor with his starboard anchor out under those conditions?

A. Why, there would not be any strain upon it.

Q. What would you say as to the sufficiency of thirty

(Testimony of Captain Henry A. Smith.)

fathoms of chain to hold a ship, she being a twenty-two hundred tons register ship, 267 feet in length and in ballast? A. Very insufficient.

Q. Now, Captain, assuming that some time between ten and eleven o'clock that night he began to drag his anchor and drifted down on to the schooner "Mildred," striking its jib-boom and carrying it away and going right on; the wind shifting to the southwest in the course of his drifting he bears down to the schooner "Stimson"; the "Stimson" is lying with her full scope of chain, 105 fathoms and one anchor; what would you say, assuming that the wind is blowing at from 25 to 35 miles an hour, as the "Rickmers" is approaching, could be done by the schooner "Stimson" at that time of night, 11:30 to 11:40, to avoid collision?

A. The "Stimson" could not have done anything.

Q. Why not? Explain your reasons fully.

A. In the first place he is not sure that the ship is dragging; he does not know that; when he sees—if he learns that she is dragging, which he would not until she got well down towards the "Stimson," then he would not know whether the bark, the "Rickmers," was going to the starboard or to the port; assuming that he set a staysail there, allow him that he had time enough to set a staysail, perhaps he might have filled to the port, but she would only swing so far, then she would come back; he could not control the vessel in the least—on in the least; she would swing this way until her chain brought

(Testimony of Captain Henry A. Smith.)

her up; she could swing so far until the chain or the bight of the chain brought her up, then she would go the other way. In my opinion a man would make a great mistake in trying to avoid a collision in a case like that.

Cross-examination.

Q. (Mr. KELLY.) Captain, when a vessel is at anchor under circumstances of heavy wind and weather and a vessel to windward of her drags, the situation is precarious at its best, is it not? A. It is.

Q. It is a dangerous situation? A. Yes, sir.

Q. And the shipmaster is then justified in taking chances to avoid a collision which he would not take otherwise; is that true? A. Yes, that is right.

Q. Now, assuming that there were time and that the circumstances were such that it would have been possible for the "Stimson" to have made sail, either fore or aft, do I understand you to say that she would not have had a chance of escaping a collision by so doing?

A. I can't see that it was possible for her to do so.

Q. Now, assuming that it was—

A. You assume that it was possible?

Q. Assume that it was, yes, sir.

A. I would not do it.

Q. I am not asking you what you would do or what you would not do; I am asking you if she would not have had a better chance to escape the collision by making sail than she would by lying inert in the matter.

A. Why, I can't see that she would for the reason

(Testimony of Captain Henry A. Smith.)

that he can't control that vessel, after he sets that stay-sail, any more than he could before.

Q. Now, I understood you to say that a vigilant, competent and careful lookout—

A. Pardon me, you did not hear me say that.

Q. Well, I understood you to say that it was not possible for those on board the "Stimson" to have detected the fact that the "Rickmers" was dragging until she got halfway from the "Mildred" to where the "Stimson" lay at anchor; is that correct?

A. That is correct. They might not detect it so soon as that.

Q. Now, I will ask you if the lookout on the "Stimson," the anchor watch, had been competent, vigilant and careful, if he would not have detected, under the circumstances of wind, weather, anchorage and prior collisions that have been put to you, if such a lookout would not have detected that the vessels lying to windward of him were in trouble and that one of them was dragging at an earlier time than the time you have indicated?

A. It is doubtful if he would.

Q. I will now ask you, Captain, in what way the breaking of the compressor block added to the probability that either the port anchor or the port chain of the "Rickmers" had been fouled under the circumstances of the question which Mr. Hughes put to you?

A. Well, that is something that I do not understand,

(Testimony of Captain Henry A. Smith.)

is what this compressor block was. It is hard to answer that question, Mr. Kelly.

Q. Well, we will assume that the compressor block was equivalent to a riding chock; that is to say, Captain, forward of the windlass and in the wake of the hawse pipe there is a contrivance which rests upon a large wooden block and which has a device for clamping the chain so that the strain of the chain comes upon this riding block or bitt, whatever you may call it, or, as it has been called in the testimony heretofore, the compressor block—that is what I refer to there; now, assuming that the compressor block is of such a character, why, then answer the question, if you will.

A. I don't understand your question.

Q. The question is this: I asked you in what way the breaking of the compressor block, added to the probability that the port anchor or the port anchor chain had been fouled under the circumstances as detailed in the question which Mr. Hughes put to you.

A. I do not see as the breaking of the compressor block would add any chances to fouling the anchor.

Q. Or the chain?

A. Or the chain—the chain fouling the anchor.

Q. Then from what arises the necessity for taking that anchor to the surface and looking at it?

A. Because it might have parted when—as I understand it, the ship was going astern rapidly; if his compressor block parted, or, as I understand this device,

(Testimony of Captain Henry A. Smith.)

it is something that will not give in the least, there is no give to this, as I understand, this riding chock or it would not have carried away, would it? When that brought up so suddenly it might have carried away a fluke of the anchor, the stock, or something like that.

Q. Then your answer is based upon the assumption that the vessel was going astern rapidly at the time that her anchor was dropped and upon the further assumption that the anchor was dropped and she was brought up short on this compressor block?

A. It would seem so.

Redirect Examination.

Q. (Mr. HUGHES.) Captain, would the riding chock or compressor block—

A. That is something that I don't know, you see; I can't tell you exactly what that is. I am assuming that that is what we call a chain stopper; it is merely a heavy pawl that drops down on our chain like that (illustrating), and holds it independent of the compressor altogether; what we call a compressor is an iron band that goes around the wire cap and sets by a lever, but this riding chock, as you explain it, I assume it to be, as I stated, what we call a chain stopper.

Q. Now, Captain, assume that this device was one that made the chain fast just behind the hawse pipe and was intended to take the entire strain off the windlass and to hold the chain absolutely. If it was in

(Testimony of Captain Henry A. Smith.)

proper condition would it have broken unless an unusual strain had been put upon it?

A. Oh, no, no.

Q. Could the strain be sufficient with the wind blowing at, say, fifteen to twenty-five miles an hour, unless the vessel had attained considerable sternway before it took up the chain?

A. I should not think so.

Q. Now, Captain, aside from the chance of the fluke of the anchor being broken or some damage done to the anchor by the same strain which caused the compressor block to break or carry away, would there not be, also, a possibility that the chain itself might be damaged or cracked?

A. There is a possibility, indeed, yes.

Q. So you would say that as an added reason why it should have been taken up and sighted so as to see?

A. Yes, sir; sure.

Q. Would that likely be increased in the light of the fact that it was subsequently found that that anchor was in fact gone? A. Yes.

Q. Now, Captain, aside from the danger of damage to the chain or the anchor by the circumstances which carried away the compressor block, I will ask you, even assuming that nothing might have happened to either the chain or the anchor, whether or not after the ship had dragged her anchor for about three-sixteenths of a mile that would not be some evidence that the chain was probably foul? A. It would to me, yes.

(Testimony of Captain Henry A. Smith.)

Q. Would that afford an added reason why it should be taken up and inspected?

A. In fact it would; it would be a great reason to me. I should not feel satisfied without seeing my anchor in a case like that before I let it go again.

Recross-examination.

Q. (Mr. KELLY.) Just one question I overlooked. You spoke, Captain, of something which I did not understand relative to the position of these two anchors and the ship after she came to her permanent anchorage. Now, will you indicate on this piece of paper here, if you will please, what you meant by that?

A. (Witness sketches on paper.) Now, in order to do that, we will call this north—

Q. North coming towards you, you mean.

A. Yes. The ship has been going this way (showing) as I understand it. Now in towing up there the tug would tow that boat this way (showing)—the beach lies this way (showing) you see, the beach lies in this direction towards West Point; in towing this ship up there the boat would naturally take her like that (showing), wouldn't she? He would drop his anchor here, the port anchor is down here (showing), is it not? The port anchor has been dropped down here; he is taking the ship up now to another anchorage and has dropped an anchor here (showing); now then, when that ship comes to swing to this wind, with the wind from the southeast, she would be like this (showing and marking), she

(Testimony of Captain Henry A. Smith.)

would be tailing this way with thirty fathoms on this anchor, or whatever he has got on this port anchor here; the ship will now be lying here by this anchor, see? Like this (showing and marking on paper); now, there is the ship.

Q. Now, will you write "port anchor" opposite this one and "starboard" here. (Witness does as requested.) Now write here "Position of ship at 10:00 P. M."

Mr. HUGHES.—Oh, no, he does not say any time.

Q. Well, "Position of ship after she tailed up under southeast wind."

A. (Writing.) "Position of ship riding to starboard anchor," I will put it.

Mr. KELLY.—Now, we will offer this in evidence here as a part of the cross-examination of this witness.

(Paper referred to offered in evidence, marked for identification as Claimant's Exhibit No. 13, and filed and returned herewith.)

A. (Continuing.) Some of those lines there—there are two lines there, but there is one that should be erased, you know.

Q. Which one ought to be erased?

A. That should be erased, but this one here (pointing), I don't know but there should be a line from this anchor to the bow of this ship here.

Q. Just draw the right course there.

A. It would be like this (pointing and marking).

(Testimony of Captain Henry A. Smith.)

Now, as the tug towed that ship up, you see the chain would go this way, and as she dropped back it would come like that (showing and marking).

(Testimony of witness closed.)

And thereupon an adjournment was taken to two o'clock P. M., the same day.

Seattle, Washington, 2 P. M.,

Friday, February 19, 1904.

Present: The same as at the morning session.

Continuation of proceedings pursuant to adjournment as follows, to wit:

Captain CHRISTIAN PETERSON, recalled as a witness for libelant, testified:

Q. (Mr. HUGHES.) Captain, you are the master of the schooner "Stimson"? A. Yes, sir.

Q. And you were at the time of the collision between the "Rickmers" and the "Stimson"?

A. I was master of her at that time.

Q. Who was aboard of the ship at that time?

A. The mate, second mate, five sailors and a cook.

Q. How long had you been at anchor there?

A. I had been at anchor fifteen days.

Q. And what had you been doing during that time?

A. I had been loading lumber.

Q. What provision had you made for loading lumber with respect to your ship and your deckload?

(Testimony of Captain Christian Peterson.)

A. I had cleaned up the hold and took everything clear to stow lumber all over.

Q. Do you carry a deckload?

A. Yes, I carry a deckload of about thirteen or fourteen feet sometimes.

Q. Did you maintain a lookout on that ship?

A. Yes, sir.

Q. What was the name of the lookout on that night?

A. His name was Rasmussen.

Q. The night of December 25th?

A. The night of December 25th, yes, sir.

Q. What has become of him?

A. I don't know what became of him. He left when we came up in the bay here.

Q. That is, since the repairs to the ship?

A. I have not seen him since.

Q. Have you made inquiries about him since they began taking the testimony the last time in this case?

A. Yes, sir. I inquired of the Sailors' Union agent; he said he didn't know where he was.

Q. What has become of your first mate?

A. He is dead.

Q. What has become of your second mate?

A. He was lost on the schooner "Tallent"; she was lost on the South Seas.

Q. Have you any of the sailors who were with you at the time of this collision? A. No, sir.

Q. Who were on board ship at the time of the collision? A. No.

(Testimony of Captain Christian Peterson.)

Q. Do you know where they are?

A. No, I do not.

Q. How long have they been absent from the ship?

A. Some of them left when we came up here and commenced to load again on March 10th; some of them stayed that voyage and left at San Pedro.

Q. You had none of them for the last year and a half?

A. No, sir.

Q. Do you know where they are?

A. No, I don't.

Q. Captain, some question has been made by the claimants in regard to the bills of expense of the "Stimson" incident to this collision. In what manner did you make up your accounts for the schooner's expenses and damages so far as the wages of the crew was concerned?

A. Well, I really didn't make up any statement to that effect, sir. I just paid off the crew and sent the bills in, you know, and the dates on which they left.

Q. The bills put in here ran from December 10th, did they?

A. Yes.

Q. That is the time when you came to anchor and commenced loading?

A. Yes.

Q. And the intention was in putting in the bills for the wages of the crew to carry the bills to March 10th.

A. To March 10th, yes, to the end of repair, rather.

Q. The end of repairs was the 25th of March.

A. Yes.

Q. That is to say all repairs were made and the car-

(Testimony of Captain Christian Peterson.)

go in on the 25th of March to the same extent it was in on the 25th of December? A. Yes, sir.

Q. And your aim was to put in the wages of the crew so as to cut out the last fifteen days?

A. Yes.

Q. And you made up your statement by the month then running from the 10th of the month for December?

A. I remember I sent in the statement that I paid off the crew on the 10th.

Q. Now, in going over these bills you found that the bill of—

A. Well, now, that is the crew's bills; I don't know whether this would be charged up to the end of the repair or not, I am not certain about that, up to the end of March, to the 26th, that is, whether they should be charged up to March 10th or charged up to March 26th.

Q. Have you gone over these bills?

A. Yes, sir, I have been all over them.

Q. And have you picked out—

A. Yes, those that I am not certain of.

Q. And those are the bills for wages?

A. Those are the bills for wages.

Q. First, the bills of Victor Carlson, \$5.60, bearing date March 14th; second, the bill of George Stedman, dated March 15th, for \$14.20; of that bill the wages after March 10th and up to the 14th, you are in doubt about? A. Yes.

Q. But the balance of the wages would be chargeable anyhow? A. Yes.

(Testimony of Captain Christian Peterson.)

Q. To make up the full ninety days in any case?

A. Yes, sir.

Q. Also the bill of Theodore Harbest, dated March 26th, for \$26.67, twenty days; that is the sixteen days of that time or fifteen days of that time you are not certain of.

A. No, sir.

Q. Also the bill of W. Pike, dated March 26th, for \$26.67, for twenty days' services; the fifteen days of that time you are not certain of? A. Yes.

Q. The next is the bill of C. Berntson, dated March 14th, for \$10.97, wages of eight days; there would be four days of that time you are not certain of? A. Yes.

Q. Now, there are certain charges for your own expenses from Blakely to Seattle that have been questioned. Was that rendered necessary by reason of this collision?

A. Yes.

Q. There is an item on your claim for a charge of \$35 for filing saw in Blakely; is that correct?

A. No, it should be thirty-five cents.

Q. Is it so charged in the Blakely bill?

A. Yes—well, no, on the bill it was charged \$35, but that is a mistake; I see that on the statement it is charged thirty-five cents.

Q. It is charged in our bills as thirty-five cents?

A. Yes.

Q. In reality in the total amount of our bills?

A. Yes.

(Testimony of Captain Christian Peterson.)

Q. And is it not charged up in the total amount of our bills as thirty-five dollars?

A. No, I don't think it is.

Q. I will ask you if you have gone over all these accounts? A. Yes, sir.

Q. With the exception of the corrections you have just made is there anything in them that was not necessary and proper as an expense arising on account of this collision? A. No, I don't see anything else.

Q. Captain, you are familiar with the character of the weather on the night of the 25th of December, 1901?

A. Yes, sir.

Q. Now, it is claimed that some time between eleven o'clock and 11:40, the latter being the time of the collision between the "Rickmers" and the "Stimson," the "Rickmers" drifted down and took off the jib-boom of the "Mildred" and then veering in her direction drifted on until she finally came down on the "Stimson." I will ask you to state what in your opinion could have been done, if anything, by the "Stimson" to avoid the collision?

Mr. KELLY.—I object to that question on the same grounds upon which the objection was made to the same question in the testimony of the previous witnesses.

A. Of course, I was not aboard, so I could not exactly say.

Q. Now, assuming that the wind was blowing at from twenty-five to thirty-five miles an hour during the time that the "Rickmers" was drifting, she was dragging her

(Testimony of Captain Christian Peterson.)

anchor, at least one of them had not been lost, and that anchor was dragging, assuming that it was dark and rainy, and about half-past eleven o'clock at night, and she finally did strike the "Stimson" on her starboard bow, coming on her stern; considering the condition and situation of the "Stimson," what, in your opinion, could have been done by those on board the "Stimson" to avoid the collision?

Mr. KELLY.—Same objection as before.

A. Well, I do not think there was time to do anything. I think the "Rickmers" was so close there was not time to do anything.

Q. So close before she would be discovered?

A. Yes.

Q. Do you think that anything with any safety could be done even if there had been time?

A. No, I think it would have been risky to do anything.

Q. Why?

A. Well, by hoisting the staysail that night we might have run into the "Rickmers"—the fore staysail.

Q. Would there also have been danger if she had taken the wind properly, would there have been danger of her swinging back in front of the "Rickmers," before the "Rickmers" would reach her?

Mr. KELLY.—That is a little bit leading, Mr. Hughes. Of course, I do not want to hamper the examination, but if the witness could state his own views, rather than the views of counsel, I would like it.

(Testimony of Captain Christian Peterson.)

A. Now, supposing we had time to hoist that staysail and haul the boom out to the starboard and the wind had filled the sail, the vessel would have swung to port, and as soon as the chain had been tight she would come right back to the other side. Now, supposing that the "Rickmers" had not come fast enough and passed us while we were over to port, we would surely have run into her when she came back on the starboard tack and we would have been solely to blame for running into the "Rickmers." That is my view of it.

Q. Captain, going back to another phase of the case upon which I think you were not examined before. The "Rickmers" after she first came to anchor split her compressor or riding chock and ten or fifteen fathoms of chain ran out, and then she dragged from her first position down nearly onto the "Corona," when she was overhauled by the tug and a line made fast from the tug upon the "Rickmers"; what, if anything, should the "Rickmers" have done with her anchor which was out, her port anchor, before having the tug tow her back?

A. Well, it would have been proper for him to heave his anchor up and see that it was clear.

Q. Why?

A. Well, so that he would know when he dropped it again that it would be able to hold him. He was not certain after she dragged that his anchor was clear.

Q. Would there be any question after a sufficient strain upon the ship to break the compressor block about the condition of his anchor or chain which would require

(Testimony of Captain Christian Peterson.)

an examination in the exercise of proper care and seamanship? A. Yes, after she dragged, I think so.

Q. Might a strain sufficient to break the riding chock prove sufficient to break the fluke of the anchor?

A. Yes, it might.

Q. Or stock? A. Yes.

Q. Or crack the chain? A. Yes.

Cross-examination.

Q. (Mr. KELLY.) Captain, do you base the necessity for a visual examination of the chain and of the anchor upon the fact that the "Rickmers" dragged?

A. Well, I don't think he had sufficient chain out, anyway.

Q. I am not referring to the quantity of chain that he had out, but you say that good seamanship would require an examination, a visual examination and sight at the anchor and chain because she had dragged?

A. Yes, sir.

Q. If there was nothing to indicate that the anchor had left the position, the ground, upon which it was first dropped, there would be no necessity, would there?

A. No.

Q. There was nothing about the breaking of the compressor block in itself, the mere fact that this riding chock had proved insufficient, which would make it necessary to look at the anchor or the chain?

A. No, but I understood the anchor broke out at the

(Testimony of Captain Christian Peterson.)

bottom so there must have been something wrong down near the anchor.

Q. And that was the reason for—

A. For lifting the anchor as soon as he had an opportunity to do so.

Q. Now, Captain, you were not on board at the time of this collision? A. No.

Q. You were in Seattle, or in Ballard?

A. No, I was in Ballard.

Q. Did you pay any attention to the weather conditions that night? A. Yes, it was blowing hard.

Q. How late were you up?

A. Oh, I was up until ten o'clock.

Q. Up until ten? A. Yes.

Q. Did you go to bed about ten?

A. Yes, about ten o'clock.

Q. Who did you leave the "Stimson" in charge of?

A. The mate.

Q. The first mate? A. The first mate.

Q. He was on board, of course?

A. He was on board, yes.

Q. Who placed the anchor watch?

A. Well, the mate did; that is, I instructed him to put a man at the watch.

Q. Do you know of your own knowledge whether he did place such a man? A. Yes, I am sure of it.

Q. Do you know the man?

A. No, I don't know as I do.

(Testimony of Captain Christian Peterson.)

Q. I understood you to say that this man left the "Stimson" while she was still at Ballard?

A. No, after we came up here to Seattle and had discovered the cargo.

Q. That was shortly after the collision?

A. Shortly after. It was either here in Seattle or over in Blakely, I don't know which.

Q. Did he leave or was he discharged?

A. He left on his own account.

Q. Without any request from you or anyone else?

A. Yes, sir.

Q. Do you know whether that is the fact or not of your own knowledge?

A. Yes; he came and told me he wanted to quit; to get a man in his place.

Q. Now, at the time of this collision, I understand you to say that under the circumstances as they have been detailed to you and as you know them, that in your opinion it was not possible for the "Stimson" to do anything to avoid this collision?

A. No, I think not.

Q. When a vessel in heavy weather under the conditions which have been described to you is to windward of a vessel at anchor and the first vessel begins to drag, comes in collision with the second vessel and has lost her holding ground, so that she is dragging, the condition and the position is a precarious one, is it not?

A. Yes.

Q. And a position in which both the dragging vessel

(Testimony of Captain Christian Peterson.)

and the vessel which is in danger at anchor should be watchful? A. Yes, sir.

Q. And should take every precaution?

A. Yes, sir.

Q. And every method of avoiding the threatened danger, should she not? A. Yes.

Q. Whose duty is it to take the steps on board the anchored vessel under those circumstances which may seem advisable?

A. Well, it is the duty of both sides.

Q. It is the duty on both sides? A. Yes.

Q. Now, I am talking to you about the duty on board the anchored vessel; whose duty is it to direct what steps should be taken?

A. Well, it is the officer having charge of the vessel.

Q. Whose duty is to inform the officer in command of the vessel at that time of the threatened danger?

A. Well, it would be the watchman in this case.

Q. Of what do the watchman's duty consist when a vessel lies at anchor under those circumstances?

A. Well, he is to look out for all danger, to see that the riding lights are burning brightly and see that the vessel don't drag; if any danger comes up it is his duty to call the mate—to call the first mate.

Q. Is it his duty to call the first mate when *anything* unusual occurs? A. Yes, sir.

Q. And it is not his duty to determine what should be done? A. No.

Q. Or what should not be done? A. No.

(Testimony of Captain Christian Peterson.)

Q. Or what can be done? A. No.

Q. Or what cannot be done?

A. No, I don't think so.

Q. Is it not the duty of the lookout?

A. Unless he is all alone on board.

Q. Well, then he would be in command, would he not?

A. Yes.

Q. What would you say of the act of a lookout who knew or might have known, if he had been watching, that a vessel lying within half a mile of him and to windward had dragged and had come into collision with another vessel lying substantially a half mile to windward of him who did not report the happening of this occurrence for at least twenty-five minutes afterwards?

A. Well, maybe he didn't see it, sir, maybe he didn't know it.

Q. Yes, but assuming that he did see it, or know it or should have seen or known it, what should you say?

A. Well, he surely would have reported if he had known of it.

Q. It was his duty to have reported it then, was it not? A. Yes, if he had known.

Q. Now, assuming that he had so reported it, that he had reported this condition of affairs, this dragging of one vessel down upon another and a collision occurring to the windward of his own vessel, under those circumstances of wind and weather, how far prior to the time that his own vessel was threatened with immediate danger do I understand you to say, Captain, as a seafaring man, that

(Testimony of Captain Christian Peterson.)

there were no steps that could then have been taken to avoid the collision?

A. Well, I don't know; surely he did not see she was in collision with the "Mildred."

Q. Well, suppose he had seen it; suppose he had seen it—suppose now—assume—that the watchman on board the "Stimson" had seen that the "Rickmers" was dragging and assume that he heard and saw that the "Rickmers" or some other vessel was in collision with the "Mildred" or some other vessel to windward of him, and assume that he had promptly reported those facts to his commanding officer; under those circumstances do I understand you to say that in your opinion there was no step which the "Stimson" could have taken to avoid the threatening collision?

A. Well, if he had had time to slip the chain and get away from there, that might have been the only chance that he could have had.

Q. His only chance in your mind was to slip the chain and get away from there?

A. Yes. They don't always take time to go to the shackles and unshackle the chain.

Q. It is a fact, is it not, that by getting head sail or stern sail upon a vessel lying at anchor at 105 fathoms scope of chain that the vessel can be steered from one side to another by maneuvering those sails?

A. Yes, sir.

Q. That is a fact?

A. Yes, sir.

(Testimony of Captain Christian Peterson.)

Q. And it is a fact also, that in case of a fore and aft rig—schooner rig—that the head sail, fore staysail or the spanker, if it is a stern sail, will have no effect upon the vessel until such a sail is trimmed, is it not?

A. Yes.

Q. That is, if her sheets are allowed to—

A. If she is lying in a wind, yes.

Q. Now, Captain, if such a sail had been hoisted there, a fore staysail or a spanker upon the “Stimson” and the crew of the “Stimson” had been on deck ready to handle the sails under the orders of the mate it would have been possible to steer that vessel by skillful seamanship, would it not, either to the one side or the other?

A. Yes, it would have been, but you could not hold her there.

Q. All right, but she could have been veered, could she not?

A. She could be veered, but you could not hold her. We will say for instance, this is the “Stimson,” this is the chain (showing); now we will veer her over to the side, then this chain will stand in this direction until it is taut, then the stern will swing and she will tail from that chain until the wind will come around the other side and she will come back this way (showing), and she will sheer over too much over there.

Q. I understand that, but—

(Testimony of Captain Christian Peterson.)

A. For that reason, I think there would be danger—for instance, the “Rickmers” had come down this side (showing), and we had come to this side; we would have had a terrible collision there. I don’t think I should have attempted it if I had been there. If there had been any way of holding the vessel over to one side, but you can’t do that, not when she is lying at an anchor.

Q. Now, Captain, if as we have assumed, the crew of the “Stimson” were on deck and the fore staysail or the spanker sail hoisted, but not trimmed, it would have been possible to have veered that ship in a timely way as the “Rickmers” drifted down upon her so as to have cleared the “Rickmers,” would it not, if the movement had been timely?

A. Well, now, in a gale of wind like that we could not have the sails hanging up amidships there because they would slat all to pieces; it is all right enough to have it in a calm or light wind, to have the sails hanging like that, but we can’t have them that way in a gale of wind; they would not last for five minutes, unless there is wind in them.

Q. I understand you to say, then, the movement could not have been timed so as to—

A. No, I don’t think it could have been timed.

Q. That is your opinion? A. Yes.

Q. And even under circumstances where the collision was inevitable unless some step was taken you

(Testimony of Captain Christian Peterson.)

would not have thought it good seamanship to try to maneuver? A. No, I think not.

Q. How much of a cargo does the "Stimson" carry of lumber?

A. She carries about nine hundred thousand, at an average, nine hundred and fifty thousand—something like that.

Q. How much of that is deck load?

A. Well, about half of it.

Q. She is four-masted schooner, is she not?

A. She is a four-masted schooner, yes, sir.

Q. How much of a house has she aft?

A. Her house is—I think it is thirty-nine feet.

Q. And how high is it?

A. It is about eight feet from the deck.

Q. Where does your jigger mast, as you call it, come with reference to the house—the after-house?

A. It stands right down through the poop; we have got a poop about four feet above the deck and then there is a house comes up about four feet above that again and goes aft and the jigger mast is standing pretty well down towards the poop.

Q. Pretty well towards the fore end of the house then?

A. Pretty well towards the fore end of the house.

Q. How much of a deck load do you carry back of the jigger mast?

(Testimony of Captain Christian Peterson.)

A. Well, we run it right back to the middle—almost back to the wheel.

Q. How much above the deck?

A. Oh, I should think about five or six feet.

Q. Did you have any deck load on board the night of this collision?

A. We had the cargo a little above the rail.

Q. Did you have any on the after house?

A. No.

Q. None at all? A. No.

Q. And there was no cargo there which would interfere with the hoisting or the maneuvering of the spanking?

A. No, only the halyards were over on the pin rail.

Q. In the charges which you have made in the bills for the wages of the crew and so forth you have included there all of the disbursements which were made for periods between the 10th of December and the 25th of December, have you not? A. Yes, sir.

Q. And those would in round numbers be something like \$275 or \$300—something of that kind?

A. I do not remember.

Q. Now, Captain, you have examined these vouchers of the expenses of the "Stimson" caused by this collision? A. Yes, sir.

Q. Examined them with some care? A. Yes.

Q. You have examined the items? A. Yes.

Q. And with the exception of the few items which

(Testimony of Captain Christian Peterson.)

you testified to in your direct examination all of these charges arise out of and became necessary because of the collision? A. Yes, sir.

Q. These repairs were completed on what date?

A. March 25th.

Q. Did you not testify in your direct examination that the repairs were completed March 10th?

A. Yes, but we were not all ready then, the riggers were not ready, the riggers were not ready until March 25th.

Q. Then all the repairs which were completed on March 10th, you mean, were—

A. Well, I mean the carpenter work and as far as the sailors' wages were concerned—everything except the riggers and the loading of the cargo that we took out of the vessel.

Q. Now, taking this bill of the Port Blakely Mill Company, dated March 7, taking these items as they occur, will you state to me how the buying of stovepipe and repairs to the bottom of the galley sink were made necessary by this collision?

A. No, not the galley sink. Where is the galley sink?

Q. Right here (showing on bill), "Repairing bottom of galley sink."

A. Well, that should not be there, that galley sink, but this here broken up aft, that is, the stovepipe aft, and the deck iron—I don't know whether there is deck

(Testimony of Captain Christian Peterson.)

iron on here or not—no, I guess it must be somewheres else—but it was all broken up aft; the boom was unshipped and came down and broke up stovepipe and deck iron and everything else right aft there.

Q. And this dollar and a half for stovepipe is for the repair of that smokestack and so forth?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir, I am sure of that.

Q. Here is a bill for \$2.50 for medical services to a sailor who was signed on February 17th; how was that occasioned?

A. That was by heaving up the fore top mast; that was all his carelessness; he held his head over the lubricator and I don't know whether it was on the lubricator or not, but the oil flew up in his face.

Q. You think that was on account of the collision?

A. I think so, because that was heaving up the top-mast.

Q. You think this man got injured on account of the collision?

A. It was on account of that injury, anyhow.

Q. Now, taking the store bill of the Port Blakely Mill Company; I wish you would run over this bill and point out the items which were incurred because of this collision and the items which ordinarily are considered ship's stores, the general ship's stores which a ship requires in order to put to sea?

(Testimony of Captain Christian Peterson.)

A. Well, these was used while we were laying in port over there.

Q. All of them were used? A. Yes.

Q. You took none of these to sea, did you?

A. No. Schwabacker's bill is there for the stuff we took to sea with us.

Q. This bill is dated March 6th.

A. Yes, that was about the time we left over there, I think.

Q. And all of the material and all of the goods making up these several items were all used on board the ship? A. Yes, sir.

Q. Prior to the time you left Port Blakely?

A. Yes, sir.

Q. Where did you buy your sea stores when you put to sea? A. Bought them of Schwabacker's.

Q. You did not buy any sea stores from the Port Blakely Mill Company? A. No, I think not.

Q. Is Schwabacker's bill in as one of the vouchers?

A. Yes, I think I saw one of them.

Q. Will you find it, please. (Witness produces paper.) Is that your bill for sea stores which you bought prior to going to sea? A. I think so, yes, sir.

Q. Those were all the store that you bought?

A. Yes, I guess it is.

Q. At that time? A. Yes.

Q. And this bill of Schwabacker Bros., dated March 11, Libelant's Exhibit "F20" is made up substantially

(Testimony of Captain Christian Peterson.)

of the sea stores which you bought just before you sailed after the repairs? A. Yes, sir.

Redirect Examination.

Q. (Mr. HUGHES.) I will ask you, Captain, if at the time of the collision you had the equivalent of this bill on ship that was used during the period of repairs?

Mr. KELLY.—I object to that question as incompetent, irrelevant and immaterial.

A. Yes.

Q. And does this bill include anything more than the amount of stores actually used by your crew during the period that you were delayed by reason of the collision?

Mr. KELLY.—I make the same objection as above.

A. No; that is about the same thing because it was a trip to San Pedro and it may be a few pounds more or less, I could not exactly swear to that.

(Testimony of witness closed.)

And thereupon proctors for the respective parties announce that they had more testimony to offer.

Testimony closed.

[Title of Court and Cause.]

Commissioner's Certificate.

I, M. L. Clifford, United State Commissioner for the District of Washington at Tacoma, do hereby certify:

That the annexed and foregoing is a true and complete record and transcript of the proceedings had and the testimony taken before me in the above-entitled cause.

That the said testimony was taken and said proceedings had at the time and place and in the manner therein specified.

That each of the witnesses therein named, before examination, was duly sworn according to law to testify the truth, the whole truth and nothing but the truth, concerning the matter in issue.

That the signatures of the several witnesses to their testimony was duly waived by the parties, the said testimony of said witnesses to be received on the trial of said cause with the same force and effect as if signed by said witnesses respectively.

That the several exhibits offered by the libelant and the respondent herein as filed and marked by me, are returned herewith.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 31st day of March, A. D. 1904.

M. L. CLIFFORD,
United States Commissioner.

[Title of Court and Cause.]

Commissioner's Fee Bill.

The Stimson Mill Company, Libelant, to M. L. Clifford,
United State Commissioner, Dr.

.....
To 732 folios of testimony (original) at 10 cts. per
folio..... \$ 73.20

Received payment in full for libelant, this 16th day
of May, 1904.

M. L. CLIFFORD,
United States Commissioner.

[Title of Court and Cause.]

Commissioner's Fee Bill.

The German Bark "Robert Rickmers," Respondent, to
M. L. Clifford, United States Commissioner, Dr.

.....
To 2 days at \$3.00 per day..... \$ 6.00
To swearing 14 witnesses to testify, at 10 cts. each 1.40
To 771½ folios of testimony, at 10 cts. per folio 77.15

Total Commissioner's fees, \$84.55

Received payment in full from respondent, this 17th
day of May, 1904.

M. L. CLIFFORD,
United States Commissioner.

[Title of Court and Cause.]

Opinion.

(Filed July 22d, 1904.)

Suit in rem, to recover damages for injuries inflicted upon a vessel at anchor by another vessel dragging her anchor in a gale. Heard on the merits. Payment of damages decreed on the ground that the drifting vessel was in fault for not being more securely moored.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Libelants.

JAMES M. ASHTON, Proctor for Respondent.

HANFORD, District Judge:

This is a suit in rem to recover damages for the injuries to the four-masted schooner "Stimson," caused by the German bark "Rickmers." The locality of the mishap is that part of the waters of Puget Sound designated on the charts as "Shilshoal Bay, on which the city of Ballard is located. The bay, so-called, is formed by a mere curvature of the eastern shore of Puget Sound, and is more of an open roadstead than a sheltered harbor, but the depth of water and material of the bottom afford good anchorage and plenty of room for a large number of vessels to lie at anchor with sufficient lengths of cables for safety. The time of the mishap was about 11 o'clock P. M., December 25, 1901, the night being dark but clear and the weather was tempestuous; that is to say, there was a high wind, which,

during the night and day previous, came in gusts of varying force, and varying in direction from southwest to southeast. The "Stimson" is a large four-masted schooner of approximately 700 tons burden, and at the time referred to was partly loaded with a cargo of lumber, and was at anchor about five-eighths of a mile offshore, and held securely by one anchor with 105 fathoms of chain, the depth of water at that place being approximately 27 fathoms. The schooner "Mildred," and the schooner "Corona" were also anchored in the bay about half a mile southward from the "Stimson," and a little less than one-quarter of a mile from each other, the "Mildred" being furthest off shore, and both the "Stimson" and the "Mildred" were to the westward of a line drawn straight from West Point to Meadow Point, which are the headlands of the so-called bay, so that both vessels were outside of Shilshoal Bay, in the open waters of Puget Sound. The "Rickmers," a German bark of about 2,200 tons burden, on the afternoon previous to the accident, while being towed to Tacoma in ballast, was brought into the bay for anchorage, on account of a strong head wind, and taken to a position a little less than a quarter of a mile to the eastward and inshore from the "Mildred," and about the same distance southwest from the "Corona," where she dropped her port anchor, in fourteen fathoms of water, and paid out about forty fathoms of cable. Instead of fetching up properly and being held by her anchor, her compressor—which is a contrivance for clutching the anchor chain to ease the strain upon the windlass—broke, and

ten or more fathoms of additional chain was paid out from the windlass, and the vessel drifted towards the schooner "Corona," and into dangerous proximity, so that a collision with her was imminent. The latter vessel was maneuvered by use of her sails in a manner to assist in avoiding a collision. The tug again attached her tow line to the "Rickmers," and pulled her back to very nearly the position first selected for anchorage, without lifting her port anchor. The "Rickmers'" starboard anchor was then dropped, with about thirty fathoms of cable, and she was left in that position by the tugboat. Line connecting the positions of the "Rickmers," "Mildred" and "Stimson" upon the chart form an isosceles triangle, the "Rickmers" and "Mildred" being at the two ends of the base, or short line of the triangle, and each of them being proximately half a mile southward from the "Stimson." At 10 P. M., the wind was blowing a gale from the southeast, and the force thereof caused the "Rickmers" to drag her anchors, and drift towards the "Mildred," and she actually came into collision with the jib-boom of that vessel, doing some damage, and then continued drifting, and sheered to the northward towards the "Stimson." After getting clear of the "Mildred" it was discovered that the "Rickmers" had lost her port anchor, and then more anchor chain was payed out to the starboard anchor, until the total length of cable on her starboard anchor was ninety fathoms. She continued to drag anchor, and drifted northward until she came into collision with the "Stimson," and locked with her, and both vessels dragged

their anchors and were driven northward several miles before they were separated, and by the collision the "Stimson" suffered the injuries for which damages are claimed in this suit.

The respondent defends on two grounds, viz.: First the casualty was an inevitable consequence of the extreme violence of the storm, and the "Rickmers" was blameless; second, the "Stimson" was herself in fault because her captain was ashore and she did not have a vigilant lookout, and neglected to attempt any maneuver to avoid the collision. In support of both of these defenses testimony of expert witnesses has been introduced.

I feel obliged to treat these defenses seriously, because able and experienced counsel has argued the propositions earnestly and with great ingenuity.

I will dispose of the second proposition first, and in this connection I find that the "Stimson" was securely anchored at a place where she had a lawful right to be; that the officers and crew on board at the time of the accident were competent to take proper care of a vessel at anchor, the regulation anchor light was set and a vigilant watch was kept. While the storm prevailed, she depended for safety upon her anchor, which proved to be sufficient to keep her in her place until the added weight of the "Rickmers" caused her to drag. She was not under any legal or moral obligation to abandon the security which her anchor afforded merely because a strange vessel had come into her vicinity. The duties of a captain do not require him to remain on board a

vessel constantly while she is at anchor, and there is no reason to suppose that the casualty could have been averted by the "Stimson's" captain if he had been on board. The captain of the "Rickmers," in his testimony, blames the "Stimson" for failure to put her helm hard-a-starboard. He appears to think if that had been done, the collision would not have happened. It is my understanding that a vessel cannot be made to change her position by use of her helm when she does not have steerageway, and the testimony of the captain does not directly controvert this principle of natural philosophy, nor does he assign any reasons for supposing that if the "Stimson's" helm had been put hard-a-starboard it would have had any effect either to check or change the movements of the "Rickmers." The argument in behalf of the respondent, based upon testimony of expert witnesses, assumes that it would have been possible for the "Stimson" to have used her sails in a manner to have forced her to swing on her cable in shore, so that the "Rickmers" might have passed without colliding. This, however, is only a suggestion of a mere possibility. To be fair, the "Stimson" cannot be convicted of a fault upon any theory which ignores the obvious hazard of any attempt to set her sails at a time when the wind was blowing with such force as to drive the "Rickmers," without sails, and against the resistance of her anchors. If the "Stimson's" sails had been set and filled for the purpose of changing her position while the gale continued, in which direction would she have moved, and where would she have fetched up? Unless an intelli-

gent answer to this inquiry can be given, there can be no basis whatever for supposing that the "Stimson" could have changed her position without increasing instead of diminishing the danger to which she was exposed. In the argument, the action of the "Corona" is instanced, and it is said that equal vigilance and skill on board the "Stimson" would have kept her out of the path of the "Rickmers." There are differences, however, which I am bound to notice, differences both in direction and velocity of the wind. The position of the "Rickmers" when she commenced to drift, after dropping her anchor the first time, was southwest of the "Corona," and the wind at that time was from the west or southwest, and its velocity was only ten miles per hour. The "Corona" could very well, under those conditions, be moved a short distance without any imprudence. That event was at about 5 o'clock P. M. At 11 o'clock, when the "Rickmers" made trouble for the "Stimson," the wind had increased to thirty-five miles per hour, and was coming offshore from the southeast, the "Rickmers" had dragged her anchor westward one-fourth of a mile, when she came into collision with the "Mildred," and her position there was a little west of south from the "Stimson," and, as I have before indicated, the distance was half a mile. If her movements could have been observed in the darkness, they indicated nothing as to her course, except that she was not under control. Therefore, the "Stimson" could not execute any movement to get out of her way which would not be as likely to

bring the two vessels into collision as to avoid a collision.

Recurring, now to the main question in the case, which is, whether the "Rickmers" was in fault, I will say, preliminarily, that the "Stimson" being entirely free from blame, and the "Rickmers" being the aggressor, there is a natural and legal presumption that the damage which she caused was due to her fault, and to be entitled to exemption from liability she must prove good seamanship in her management and that her ground tackle was in condition fit for the service required so that there was no imprudence in releasing the tug and trusting her anchors in view of the existing conditions. The natural presumption is strengthened in this case by the indisputable fact that the other vessels exposed to the same force were held securely by their anchors, proving that if the "Rickmers" had been equipped with suitable anchors for a vessel of her size, and with sound cables with sufficient strength, and if she had been carefully moored, by placing her anchors properly, so as to have secured the advantage of their combined holding power, with sufficient length of chains and room to swing without coming in contact with the other vessels, she, too, would have withstood the storm without damage; but, instead of behaving as other vessels in the bay behaved, the "Rickmers" acted like an evil sprite, first making a hostile demonstration towards the "Corona," which frightened that little craft into making extraordinary manœuvres, later striking out to the westward, breaking the "Mildred's" nose, and then rushing

north to embrace the "Stimson," and wildly dancing with her to the music of the hurricane for a distance of seven or eight miles. I can admire, although I cannot adopt, the ingenious theories of the expert witnesses by which they exculpate the "Rickmers" from all blame, and also condemn the "Stimson" for not being sufficiently alert and nimble to keep out of the reach of the impetuous stranger. The word "expert" appears to be peculiarly apt and appropriate for describing the testimony upon which the respondent relies. Considering the threatening weather when the "Rickmers" came into the bay, and the unbroken sweep of the wind, with the exception of the little protection afforded by Magnolia Bluff, a careful navigator would have chosen a position for anchorage which would have enabled his vessel to swing with ample scope of cable without danger of colliding with other vessels previously anchored in the bay. The excuse offered for not paying out more cable than forty fathoms on the port anchor, and thirty fathoms on the starboard anchor, was that greater length of chain would have caused the "Rickmers" to swing dangerously near the "Mildred" and the "Corona." This proves that inexcusable error was committed in choosing the place of anchoring, and the captain of the "Rickmers" in his testimony claims that he was not satisfied with the location, but dropped anchor at the place indicated by the captain of the tug, who it is insisted must be held responsible as a local pilot. This, however, does not relieve the "Rickmers" from legal liability. She is answerable for damages caused by the inexcusable er-

rors of whoever for the time being had control of her movements, whether in the capacity of master, chief mate, or local pilot. *Homer Ramsdell Transportation Co. vs. La Compagnie Generale Transatlantique*, 182 U. S. 406, 21 Sup. Ct. 831, 45 L. Ed. 1155; *The China vs. Walsh*, 7 Wall. 53, 19 L. Ed. 67; *The Merrimac*, 14 Wall. 199; *Ralli vs. Troop*, 157 U. S. 386, 15 Sup. Ct. 657, 39 L. Ed. 742; *The John G. Stevens*, 170 U. S. 113, 18 Sup. Ct. 544, 42 L. Ed. 969; *The Barnstable*, 181 U. S. 464, 21 Sup. Ct. 684, 45 L. Ed. 954; *Harrison vs. Hughs*, 125 Fed. Rep. 860.

From the evidence I find that the actual damages to "Stimson" legitimately chargeable to the collision amount to the aggregate sum of \$18,680.00, for which amount, with interest and costs, a decree will be given in favor of the libelant. In this amount there is included \$9,388.00 for expenses paid for repairs, and for unloading and reloading, and necessary expenses of the ship during seventy-four days of detention; \$5,000.00 for estimated permanent damage by impairment of the salable value of the ship, and \$4,292.00 for demurrage at the rate of \$58.00 per day for seventy-four days.

C. H. HANFORD,

Judge.

[Endorsed]: Filed in the U. S. District Court. Jul. 22, 1904. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

[Title of Court and Cause.]

Motion for Rehearing.

Now comes the claimant in the above-entitled cause and respectfully moves the Court for an order granting a rehearing thereof, for the reason that the Court appears to the claimant to be in error in finding for the libelant and particularly in finding for the libelant in the sum of \$5,000.00 for estimated permanent damage by impairment of the salable value of libelant's ship, and in the sum of \$4,292.00 for demurrage, at the rate of \$58.00 per day for seventy-four days.

J. M. ASHTON,
Proctor for Claimant.

The receipt of a copy of the within and foregoing motion is hereby acknowledged this 9th day of August, 1904.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Libelant.

[Endorsed]: Filed Aug. 12th, 1904. R. M. Hopkins,
Clerk. By A. Reeves Ayres, Deputy.

[Title of Court and Cause.]

Order Overruling Motion for Rehearing.

The motion for a rehearing herein and the grounds urged in support thereof having been fully argued by counsel upon the 26th day of October, 1904, and taken under advisement until this date.

Upon Appeal from the United States District
Court for the District of Washington,
Western Division.

UPON CROSS-APPEAL

APOSTLES

C. SCHWARTING, Master and Claimant of the German Bark
"ROBERT RICKMERS," her Tackle, Apparel and Furniture,
Cross-Appellee.

vs.

THE STIMSON MILL COMPANY (a Corporation),
Cross-Appellant,

THE STIMSON MILL COMPANY (a Corporation),
Appellee.

vs.

C. SCHWARTING, Master and Claimant of the German Bark
"ROBERT RICKMERS," her Tackle, Apparel and Furniture,
Appellant,

FOR THE NINTH CIRCUIT.

UNITED STATES CIRCUIT COURT OF APPEALS

It is now ordered and decreed that said motion be and the same is overruled, to which ruling the claimant and owners of the "Rickmers" except and their exception is here allowed.

Dated Nov. 2d, 1904.

C. H. HANFORD,
Judge.

[Endorsed] : Filed in the U. S. District Court. Nov. 2, 1904. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

[Title of Court and Cause.]

Decree.

This cause having come on duly and regularly to be heard before the Court, upon the report of the United States Commissioner, M. L. Clifford, heretofore duly appointed to take testimony herein, and to report the same to this Court, and upon the depositions taken and reported to this Court herein, in pursuance of the stipulations of the parties hereto, and upon the pleadings and proofs on file herein; and said cause having been duly argued by counsel for the respective parties, and duly submitted to the Court, and the said Court having heard and considered said testimony, and being duly advised in the premises, and having heretofore made and filed its written opinion in said cause wherein it stated the findings and conclusions of the Court, and the Court having overruled the motion of claimant for a rehearing herein; and it appearing to the Court that the libellant

has, by reason of the premises, suffered damages in the sum of eighteen thousand six hundred and eighty dollars (\$18,680), and that it is entitled to a decree therefor against the claimant and his surety herein for the said sum, with interest thereon at the rate of 6% per annum from the 25th day of March, 1902; and it further appearing to the Court that the claimant has made and filed herein, under and in pursuance of the provisions of Sec. 941 of the Revised Statutes of the United States, and in accordance with the stipulations of the parties hereto, a bond, in pursuance of which stipulations and bond, the said German bark "Robert Rickmers," her tackle, apparel and furniture, were duly released from the custody of the marshal of this court, which said bond is in the sum of \$25,000 and whereon the National Surety Company of New York, a corporation, is surety, said bond being duly conditioned as required by law and the rules of this court.

Wherefore, it is hereby ordered, considered, adjudged and decreed by the Court that the libelant, Stimson Mill Company, a corporation, do have and recover of and from the claimant herein, C. Schwarting, and his surety, the National Surety Company of New York, and each of them, the sum of twenty-one thousand six hundred and twelve and $\frac{75}{100}$ dollars, with interest thereon from the date hereof at the rate of 6% per annum, together with the costs of this action taxed at \$326.57, and if this decree be not satisfied and discharged in the manner and time prescribed by the rules of this court, that execution issue in accordance therewith to all of which

said claimant and surety except and said exception is here allowed.

Done in open court this 7th day of November, A. D. 1904.

C. H. HANFORD,
Judge.

[Endorsed]: Filed Nov. 7, 1904, R. M. Hopkins, Clerk.

[Title of Court and Cause.]

Assignment of Errors.

Now comes the claimant in the above-entitled cause and assigns as error in the findings and decree of the court herein the following assignments of error:

First.—The Court erred in finding as a fact that at and before the time of the collision a vigilant watch was kept on and by the schooner “Stimson.”

Second.—The Court erred in finding as a matter of law that the schooner “Stimson” was under no obligation to abandon or shift her anchorage to avoid imminent danger of collision and to minimize the damage resulting therefrom.

Third.—The Court in finding as a fact that the schooner “Stimson” under the conditions of wind, weather and anchorage existing at and before the time of collision, could not have been maneuvered so as to avoid the collision or to have minimized the damage resulting therefrom.

Fourth.—The Court erred in finding as a matter of fact and of law that the schooner “Stimson” was free from blame as to the matters causing or contributing to the collision.

Fifth.—The Court erred as a matter of law in burdening the “Rickmers” with the duty of meeting a presumption of fault under the facts and circumstances of this case; and erred further in placing upon the “Rickmers” the duty of a vessel in motion and under control to avoid a collision with a vessel at anchor.

Sixth.—The Court erred in finding as a matter of fact that all other vessels similarly situated at the time of the accident were held securely by their anchors; and further erred in burdening the “Rickmers” with any presumption of fault because of this fact so found.

Seventh.—The Court erred as a matter of law in relieving the libelant from the duty of proving that the collision was caused by the neglect of some duty owed to the libelant by the respondent.

Eighth.—The Court erred as a matter of fact and of law in finding that the anchorage of the “Rickmers” was chosen improperly.

Ninth.—The Court erred in finding as a matter of law that the “Rickmers” was to blame for the causes leading up to or contributing to the collision.

Tenth.—The Court erred in failing to find as a matter of law that the “Stimson” was to blame because of her failure to take seasonable steps to avoid or minimize the results of the collision.

Eleventh.—The Court erred in not dismissing the libel with costs.

Twelfth.—The Court erred in allowing as damages five thousand dollars for estimated permanent damage by impairment of the salable value of the libelant's vessel.

Thirteenth.—The Court erred in overruling and denying the motion of the claimant for a rehearing herein.

Fourteenth.—The Court erred in entering final judgment and decree herein against the claimant and his surety and each of them in the sum of twenty-one thousand six hundred and twelve dollars and seventy-five cents with six per cent interest thereon from the 7th day of November, 1904, the date of the said decree, together with the costs of this action taxed at three hundred and sixteen dollars and fifty-seven cents.

Fifteenth.—The Court erred in allowing libelant full demurrage of its vessel at the rate of fifty-eight dollars per day during seventy-four days of detention, and in addition thereto her necessary expenses during such detention.

Sixteenth.—The Court erred in allowing interest from any date prior to the date of the final decree herein.

JAMES M. ASHTON,
Proctor for the Claimant.

[Endorsed]: Filed in the U. S. District Court. Nov. 12, 1904. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

Due service of within assignments of error after the filing of same by receipt of a true copy thereof admitted this 12th day of November, 1904.

HUGHES, McMICKEN, DOVELL & RAMSEY,

Proctors for Libelants.

[Title of Court and Cause.]

Notice of Appeal.

To the Clerk of the Above-entitled Court, and to the Above-named Libelant, and to Messrs. Hughes, McMicken, Dovell & Ramsey, Its Proctors:

Now comes the claimant in the above-entitled cause and hereby appeals from the judgment and decree rendered herein in favor of the libelant upon the 7th day of November, 1904, and entered on the 7th day of November, 1904, and from each and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Tacoma this 12th day of November, 1904.

JAMES M. ASHTON,

Proctor for the Claimant.

United States of America, }
 District of Washington. } ss.

Due service of the above notice of appeal, after the filing of the same in the office of the clerk of the District Court of the United States for the District of Washing-

ton, Western Division, is hereby admitted this 12th day of November, 1904.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Libelant.

[Endorsed]: Filed in the U. S. District Court. Nov. 12, 1904. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

[Title of Court and Cause.]

**Notice of Hearing of Application for Appeal and to Fix
Amount of Cost and Supersedeas Bond.**

To the Stimson Mill Company, Libelant in the Above-entitled Cause, and to Hughes, McMicken, Dovell & Ramsey, its Proctors:

Take notice that the claimant herein will apply to the Court at its sitting in the courtroom at Walla Walla, on Thursday, November 17th, at ten o'clock A. M., or as soon after as the matter can be heard, for an order allowing an appeal and fixing and approving a bond for costs and fixing and approving a bond for supersedeas, true copies of which motion and proposed order are hereto annexed.

Dated at Tacoma this 12th day of November, 1904.

JAMES M. ASHTON,
Proctor for Claimant.

Due service and receipt of the within and foregoing notice and copies is hereby acknowledged this 12th day of November, 1904.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Libelant.

[Endorsed]: Filed in the U. S. District Court. Nov. 22, 1904. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

[Title of Court and Cause.]

Motion for Order Allowing Appeal, etc.

Now comes the claimant herein and respectfully shows that he has given notice of appeal from the judgment and decree rendered herein to the United States Circuit Court of Appeals for the Ninth Circuit; and further shows that at the time the libel in this cause was brought the ship was released upon a stipulation in the sum of \$25,000, conditioned to abide by and pay the final decree rendered in this cause by this court, or, in case of appeal by the appellate court.

Wherefore the claimant now moves the Court for an order allowing its said appeal, and further ordering that the bond now on file in this cause shall be a sufficient bond on appeal, and that the said bond be considered as and for a supersedeas bond, and that the claimant be relieved from giving other and further bonds except a stipulation for costs on appeal in the sum of \$250.00.

Dated at Tacoma the 12th day of Novr., 1904.

JAMES M. ASHTON,
Proctor for Claimant.

[Endorsed]: Filed in the U. S. District Court. Nov. 22, 1904. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

[Title of Court and Cause.]

Order Allowing Appeal and Fixing Bond on Appeal.

On motion of the proctor for the claimant, it appearing to the Court that a notice of appeal from the judgment and decree of the court herein having been duly filed, and it appearing further that a stipulation with sufficient sureties in the sum of \$25,000 has been given by the claimant conditioned to abide by and pay the decree of the court herein or, in case of appeal, of the appellate court it is hereby ordered that the said appeal be allowed, and that the said bond and stipulation now on file be and considered as a supersedeas bond; that the proceedings herein be stayed until the further order of this court or of the appellate court in the premises, and that the claimant be relieved of giving other and further bonds or stipulation on appeal other than and exception a stipulation for costs on appeal in the sum of \$250.00.

Done in open court at Tacoma this 17th day of Novr., 1904.

C. H. HANFORD,
Judge.

[Endorsed]: Filed in the U. S. District Court. Nov. 22, 1904. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

[Title of Court and Cause.]

Bond for Costs on Appeal.

Know all men by these presents, that we, C. Schwarting, master of the German bark "Robert Rickmers," claimant in the above-entitled cause acting for and in the interest of "Rickmers," Reismuhlen, Rhederei & Schiffbau A. G., owners of the said bark, as principal, and the Title Guaranty & Trust Company of Scranton, Pa., as surety, are held and firmly bound unto the Stimson Mill Company, the libelant in the above-entitled cause in the sum of two hundred and fifty dollars, to be paid to the said obligee, to which payment well and truly to be made we hereby bind ourselves, our heirs, successors, administrators and assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated at Tacoma, this 14th day of Novr., 1904.

The condition of this obligation is such that whereas lately at a District Court of the United States for the District of Washington, Western Division, in the above-entitled cause a decree was entered against the above-named claimant and his stipulators from which decree the claimant has obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit. Now, therefore,

If the said claimant, as such appellant, shall prosecute his appeal to effect, and shall pay all costs on appeal which by the decree, mandate or practice of the said appellate court he may become liable to pay, if said appeal is not sustained, then this obligation shall be void; otherwise to be and remain in full force and effect, and execution to issue thereon for the amount of such costs, not exceeding two hundred and fifty dollars at the instance of any person interested as aforesaid.

C. SCHWARTING, Master.

By JAMES M. ASHTON,

His Proctor and Attorney.

[Bond Company Seal.]

THE TITLE GUARANTY AND TRUST COMPANY, OF SCRANTON, PENN.,

By ELI P. NORTON and

W. H. HAYDEN,

Its Attorneys in Fact.

The within and foregoing bond for costs on appeal is hereby approved.

Dated at Tacoma this 14th day of November, 1904.

C. H. HANFORD,

Judge.

[Endorsed]: Filed in the U. S. District Court. Nov. 22, 1904. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

[Title of Court and Cause.]

Notice of Filing Bond for Costs on Appeal.

To the Above-named Respondent and Libelant, The Stimson Mill Company, a Corporation, and Messrs. Hughes, McMicken, Dovell & Ramsey, its Proctors:

You and each of you will please take notice, that the undersigned appellant herein has this day filed in the office of the clerk of the United States District Court for the District of Washington, at Tacoma, his cost bond on appeal herein with the Title Guaranty and Trust Company of Scranton, Pa., as surety, and has also this day filed in the office of said clerk the order of the Judge of said District Court made on the 17th day of November, 1904, fixing and allowing the existing bond for the release of said bark "Robert Rickmers" to stand as a supersedeas bond pending the determination of the appeal herein.

Dated November 22nd, 1904.

JAMES M. ASHTON,
Proctor for Claimant and Appellant.

[Endorsed]: Filed in the U. S. District Court. Nov. 23, 1904. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

Due service of within notice by receipt of a true copy thereof admitted this 22nd day of Nov., 1904.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Respondent on Appeal.

[Title of Court and Cause.]

Praecipe for Apostles on Appeal.

To the Clerk of the District Court of the United States
for the District of Washington, Western Division.

Please prepare, certify and transmit to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, apostles in this case as follows:

First. The requirements of subdivision one of section one of Rule 4 of the rules in admiralty of said Circuit Court of Appeals, adopted May 21st, 1900.

Second. Stipulation between the parties dated November 12th, 1904.

Third. The libel and the amended answer herein with exhibits, if any annexed thereto.

Fourth. All the testimony in the case, together with the original of all exhibits introduced in connection therewith.

Fifth. Opinion of the Court finally deciding the case.

Sixth. The claimant's and appellant's motion for rehearing with notice of hearing same, and the order of the Court denying the rehearing.

Seventh. The final decree herein.

Eighth. The notice of appeal from said decree, with proof of filing and service of same.

Ninth. The appellant's assignments of error, with proof of their filing and service.

Tenth. The bond for costs on appeal. The motion fixing supersedeas bond and notice of hearing same, together with the order of the Judge of the District Court allowing the bond already given by appellant to stand as a supersedeas bond on appeal and the notice of filing said bond and the proof of service thereof.

Eleventh. Citation on appeal.

The notice of appeal having been filed and served upon November 12th, 1904, you will please have filed in the office of the clerk of said Court of Appeals at San Francisco the foregoing apostles on or before the 12th day of December, 1904.

Respectfully,

JAMES M. ASHTON,

Proctor for Appellant, C. Schwarting, Master of the German Bark "Robert Rickmers," the Claimant in the District Court.

[Endorsed]: Filed in the U. S. District Court. Nov. 22, 1904. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

Clerk's Certificate to Apostles on Appeal.

United States of America, }
 District of Washington. } ss.

I, R. M. Hopkins, clerk of the District Court of the United States for the District of Washington, do hereby certify the foregoing typewritten pages, numbered from

one to five hundred and eighty-four, both inclusive, to contain a full, true and correct transcript of the record in the said District Court in the within entitled cause, made up in pursuance to Rule IV of the Admiralty Rules of the Circuit Court of Appeals for the Ninth Circuit.

I do further certify that there has been paid to me by the proctor for the appellant the sum of two hundred seventy-seven and 15/100 (\$277.15) dollars as clerk's fees upon said transcript on appeal.

Attest my official signature and the seal of the said District Court, at the city of Tacoma, in said District, the second day of December, A. D. 1904.

[Seal]

R. M. HOPKINS,
Clerk.

By Saml. D. Bridges,
Deputy Clerk.

[Title of Court and Cause.]

Citation on Appeal.

The United States of America, }
District of Washington. } ss.

The President of the United States of America to the
Stimson Mill Company, a Corporation, Libelant and
Respondent on Appeal in the Above-entitled Cause.
Greeting;

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals to be holden at the city of San Francisco, California, in

and for the Ninth Circuit, within thirty days from the date hereof, pursuant to an appeal of the claimant from a decree of the United States District Court for the District of Washington, Western Division, in a certain cause in admiralty wherein you are the libelant and the German bark "Robert Rickmers," her tackle, apparel and furniture is the respondent, and C. Schwarting, master of the said bark, is the claimant, to show cause, if any you have, why the decree rendered against the claimant in said cause as in said decree mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 12th day of November, 1904, and of the Independence of the United States, the one hundred and twenty-eighth.

C. H. HANFORD.

Judge of the District Court of the United States for the District of Washington.

[Endorsed]: In the United States Circuit Court of Appeals, Ninth Circuit. The Stimson Mill Co., a Corporation, Libelant and Respondent, vs. C. Schwarting, Master German Bark "Robt. Rickmers," Claimant and Appellant. In Admiralty. Citation on Appeal. Due Service of Within Citation by Receipt of a True Copy Thereof Admitted this 12th day of Nov., 1904. Hughes, McMicken, Dovell & Ramsey, Proctors for Respondent on Appeal. Filed in the U. S. District Court, Nov. 22, 1904. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

J. M. Ashton, Proctor for Claimant and Appellant, Office, Room 410, Fidelity Trust Bldg., Tacoma.

[Endorsed]: No. 1149. United States Circuit Court of Appeals for the Ninth Circuit. C. Schwarting, Master and Claimant of the German Bark "Robert Rickmers," Her Tackle, Apparel and Furniture, Appellant, vs. the Stimson Mill Company, a Corporation, Appellee. Apostles on Appeal. Upon Appeal from the United States District Court for the District of Washington, Western Division.

Filed Dec. 10, 1904.

F. D. MONCKTON,
Clerk.



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*District Court of the United States, District of Washington,
Western Division.*

Statement Under Rule IV.

Parties:

The Stinson Mill Company, a corporation, libelant and
cross-appellant.

C. Schwarting, as master and claimant of the German
bark "Robert Rickmers," her tackle, apparel and
furniture, cross-appellee.

Statement:

Dec. 15, 1904. Assignment of errors of cross-libelant
filed.

Cross-appeal allowed and bond for costs fixed at \$250.

Bond for costs filed and approved.

Notice of cross-appeal, with admission of service,
filed.

Citation issued and filed with acknowledgment of ser-
vice.

Proctors:

Messrs. Hughes, McMicken, Dovell & Ramsey, Bailey
Building, Seattle, Wash., for cross-appellant.

Mr. James M. Ashton, Fidelity Building, Tacoma,
Wash., for cross-appellee.

*In the United States District Court for the District of Wash-
ington, Western Division.*

IN ADMIRALTY.

THE STIMSON MILL COMPANY (a Corporation),	Libelant,	} No. 364.
vs.		
The German Bark "ROBERT RICK- MERS," Her Tackle, Apparel and Furniture,	Respondent.	
C. SCHWARTING, Master,	Claimant.	

Assignment of Errors.

Now comes the libelant in the above-entitled cause and assigns error in the findings and decree of the Court herein as follows:

I.

The Court erred in allowing libelant only the sum of \$4,292.00 for demurrage.

II.

The Court erred in allowing demurrage for only 74 days, whereas libelant's ship actually lost 90 days by reason of the said collision and was entitled to demurrage for the full period of said 90 days.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Libelant.

Copy of within assignment of errors received and due service of same acknowledged this 15th day of December, 1904.

JAMES M. ASHTON,

Proctor for said Respondent and C. Schwarting, Master, Claimant.

[Endorsed]: Filed in the U. S. District Court, Dist. of Washington. Dec. 15, 1904. R. M. Hopkins, Clerk.

In the United States District Court for the District of Washington, Western Division.

IN ADMIRALTY.

THE STIMSON MILL COMPANY (a Corporation),	} Libelant,	} No. 364.
vs.		
The German Bark "ROBERT RICKMERS," Her Tackle, Apparel and Furniture,	} Respondent.	}
C. SCHWARTING, Master,		

Order Allowing Cross-appeal and Fixing Cost Bond.

On motion of the proctor for the libelant, it appearing to the Court that a notice of cross-appeal from the judgment and decree of the Court herein having been duly filed, it is hereby ordered that the same cross-appeal be, and it is hereby allowed, and the stipulation for

costs on said cross-appeal hereby fixed at the sum of \$250.00.

Done in open court this 15th day of December, A. D. 1904.

(Signed) C. H. HANFORD,
Judge.

Copy of within order received and due service of same acknowledged this 15th day of December, 1904.

JAMES M. ASHTON,
Proctor for said Respondent and Claimant.

[Endorsed]: Filed in the U. S. District Court, Dist. of Washington. Dec. 15, 1904. R. M. Hopkins, Clerk.

In the United States District Court for the District of Washington, Western Division.

IN ADMIRALTY.

THE STIMSON MILL COMPANY (a Corporation),	Libelant,	} No. 364.
vs.		
The German Bark "ROBERT RICK- MERS," Her Tackle, Apparel and Furniture,	Respondent,	
C. SCHWARTING, Master.	Claimant.	

Bond for Costs on Cross-appeal.

Know all men by these presents, that we, the Stimson Mill Company, a corporation, libelant in the above-en-

titled cause, as principal, and R. R. Spencer, and W. St. Wright, as sureties, are held and firmly bound unto C. Schwarting, claimant in the above-entitled cause, in the sum of two hundred and fifty dollars, to be paid to the said obligee, to which payment well and truly to be made, we hereby bind ourselves, our heirs, successors, administrators and assigns, jointly and severally firmly by these presents.

Signed, sealed and dated at Seattle, this 15 day of December, A. D. 1904.

The condition of this obligation is such that whereas, lately at a District Court of the United States for the District of Washington, Western Division, in the above-entitled cause, a decree was entered against the above-named claimant and his stipulators, from which decree the said claimant has taken an appeal and from which decree the said libelant has likewise taken a cross-appeal to the said United States Circuit Court of Appeals for the Ninth Circuit;

Now, therefore, if the said libelant, as such cross-appellant shall prosecute its cross-appeal to effect and shall pay all costs on said cross-appeal, which by the decree, mandate or practice of the said appellate court it may become liable to pay, if said cross-appeal is not sustained, then this obligation shall be void, otherwise to be and remain in full force and effect and execution to

issue thereon for the amount of said costs, not exceeding two hundred and fifty dollars, at the instance of any person interested as aforesaid.

(Signed) STIMSON MILL COMPANY,
Libelant,

By HUGHES, McMICKEN, DOVELL & RAMSEY,
Its Proctors.

R. R. SPENCER and
W. St. WRIGHT.

The within and foregoing bond for costs on cross-appeal is hereby approved.

Dated at Seattle, Washington, this 15th day of December, 1904.

C. H. HANFORD,
Judge.

The said respondent and C. Schwarting, master, claimant, hereby waive notice of the filing of the foregoing bond and assent to the sufficiency of the sureties thereon.

Dated Dec. 15th, 1904.

JAMES M. ASHTON,
Proctor for said Respondent and C. Schwarting, Master, Claimant.

Copy of within bond received and due service of same acknowledged this 15th day of December, 1904.

JAMES M. ASHTON,
Proctor for said Respondent and C. Schwarting, Master, Claimant.

[Endorsed]: Filed in the U. S. District Court, Dist. of Washington. Dec. 15, 1904. R. M. Hopkins, Clerk.

*In the United States District Court for the District of Wash-
ington, Western Division.*

IN ADMIRALTY.

THE STIMSON MILL COMPANY (a Corporation),	} Libelant,	} No. 364.
vs.		
The German Bark "ROBERT RICK- MERS," Her Tackle, Apparel and Furniture,	} Respondent.	}
C. SCHWARTING, Master,		

Notice of Cross-appeal.

To the Clerk of the Above-entitled Court, and to the
Above-named Claimant and to James M. Ashton,
His Proctor:

Now comes the libelant in the above-entitled cause
and hereby appeals to the United States Circuit Court
of Appeals for the Ninth Circuit, from so much of the
judgment and decree rendered and entered in said cause,
in favor of the libelant, on the 7th day of November,
1904, as allows to the libelant for demurrage only the
sum of \$4,292.00, at the rate of \$58.00 per day for 74
days only.

Dated this 15 day of December, 1904.

HUGHES, McMICKEN, DOVELL & RAMSEY,

Proctors for Libelant.

United States of America, }
 District of Washington. } ss.

Due service of the above-entitled notice of cross-appeal after the filing of the same in the office of the clerk of the District Court of the United States for the District of Washington, Western Division, is hereby admitted this 15th day of December, 1904.

JAMES M. ASHTON,
 Proctors for Claimant.

[Endorsed]: Filed in the U. S. District Court, Dist. of Washington. Dec. 15, 1904. R. M. Hopkins, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN ADMIRALTY.

THE STIMSON MILL COMPANY (a Corporation), Libelant and Respondent, vs. C. SCHWARTING, Master of the German Bark "ROBERT RICK- MERS," Claimant and Appellant.	}	No. 364.
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Praeceptum for Apostles.

To the Clerk of the District Court for the District of Washington, Western Division:

Please prepare, certify and transmit to the Clerk of the United States Circuit Court of Appeals for the

Ninth Circuit at San Francisco, apostles upon the cross-appeal of the above-named libelant in this cause in addition to (but not including therein) all the matters and things embraced in the apostles in this case of the claimant and appellant C. Schwarting, to wit:

I.

The notice of cross-appeal from said decree, with proof of filing and service of same.

II.

The assignment of errors of cross-appellant with proof of their filing and service.

III.

The order allowing cross-appeal and fixing stipulation for costs thereon.

IV.

The bond for costs on cross-appeal with the order approving the same and the notice of filing said bond and proof of service thereon.

V.

The citation on cross-appeal.

The notice of cross-appeal having been filed and served upon the 15th day of December, A. D. 1904, you will please have filed in the office of the clerk of said Court of Appeals at San Francisco, the foregoing apostles as soon as convenient and not later than thirty

days from the date of the filing and service of said notice of said cross-appeal.

Respectfully,

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Libelant and Cross-appellant, Stimson
Mill Company.

Copy of within praecipe for apostles received, and due service of same acknowledged this 15th day of Decr., 1904.

JAMES M. ASHTON,
Proctor for said Bark "Robert Rickmers" and said
Claimant.

[Endorsed]: Filed in the U. S. District Court., Dist. of Washington. Dec. 15, 1904. R. M. Hopkins, Clerk.

*In the United States Circuit Court of Appeals for the Ninth
Circuit.*

IN ADMIRALTY.

STIMSON MILL COMPANY (a Corpo-
ration),

Libelant and Respondent,

vs.

C. SCHWARTING, Master of the
German Bark "ROBERT RICK-
MERS," Her Tackle, Apparel and
Furniture.

Claimant and Appellant.

No. —.

Citation on Cross-appeal.

The United States of America, }

ss.

District of Washington.

The President of the United States of America to C.
Schwartzing, Master of the German Bark "Robert
Rickmers," Claimant and Respondent on Cross-ap-
peal in the Above-entitled Cause, Greeting:

You are hereby cited and admonished to be and ap-
pear at a United States Circuit Court of Appeals to be
holden at the city of San Francisco, California, in and
for the Ninth Circuit, within thirty days from the date
hereof, pursuant to a cross-appeal of the libelant from
a decree of the United States District Court for the

District of Washington, Western Division, in a certain cause in admiralty, wherein the Stimson Mill Company, a corporation, is libellant, and the German bark "Robert Rickmers," her tackle, apparel and furniture is respondent, and C. Schwarting, master of said bark is claimant, to show cause, if any you have, why the decree rendered against the claimant in said cause, as in said decree mentioned, should not be corrected, and why speedy justice should not be shown the parties in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 15th day of December, A. D. 1904, and of the Independence of the United States the one hundredth and twenty-eighth.

[Seal]

C. H. HANFORD,

Judge of the District Court of the United States for the District of Washington.

Copy of within citation received, and due service of same acknowledged this 15th day of December, 1904.

JAMES M. ASHTON,

Proctor for said Bark "Robert Rickmers" and C. Schwarting, Master, Claimant.

[Endorsed]: Original. In the United States District Court, District of Washington, Western Division. The Stimson Mill Co., Libellant, vs. "Robert Rickmers," etc., Respondent. C. Schwarting, Claimant. Citation on Cross-appeal. Filed in the U. S. District Court, Dist. of Washington. Dec. 15, 1904. R. M. Hopkins, Clerk.

Clerk's Certificate to Apostles upon Cross-appeal.

United States of America, }
District of Washington. } ss.

I, R. M. Hopkins, Clerk of the District Court of the United States for the District of Washington, do hereby certify the foregoing typewritten pages to contain the apostles on cross-appeal in the within entitled cause, made up pursuant to Rule IV of the Admiralty Rules of the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that there has been paid to me by the proctors for the cross-appellant the sum of \$11.15, as clerk's fees upon said cross-appeal.

Affest my official signature and the seal of the said District Court, at the city of Tacoma, the 27th day of December, A. D. 1904.

[Seal]

R. M. HOPKINS,
Clerk.

By Saml. D. Bridges,
Deputy Clerk.

[Endorsed]: No. 1149. United States Circuit Court of Appeals for the Ninth Circuit. C. Schwarting, Master and Claimant of the German Bark "Robert Rickmers," Her Tackle, Apparel and Furniture, Appellant, vs. The Stimson Mill Company (a Corporation), Appellee. The Stimson Mill Company (a Corporation), Cross-appel-

lant, vs. C. Schwarting, Master and Claimant of the German Bark "Robert Rickmers," Her Tackle, Apparel and Furniture, Cross-appellee. Apostles upon Cross-appeal. Upon Appeal from the United States District Court for the District of Washington, Western Division.

Filed December 31, 1904.

F. D. MONCKTON,

Clerk.

In the United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

C. SCHWARTING, Master and Claimant of the German
barque, "Robert Rickmers," her tackle, apparel and
furniture,

Appellant,

vs.

THE STIMSON MILL COMPANY, a corporation,
Appellee.

Brief of Appellant.

FILE

FEB -2 19

UPON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF
WASHINGTON, WESTERN DIVISION, SIT-
TING IN ADMIRALTY.

JAMES M. ASHTON,
FRANK H. KELLEY,
Proctors for Appellant.



In the United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

C. SCHWARTING, Master and Claimant of the German
barque, "Robert Rickmers," her tackle, apparel and
furniture,

Appellant,

vs.

THE STIMSON MILL COMPANY, a corporation,

Appellee.

BRIEF OF APPELLANT

STATEMENT OF THE CASE.

This is a cause of collision, civil and maritime, in which the libelant, as the managing owner of the schooner "Stimson," complains of the "Rickmers" and alleges that the "Rickmers" was improperly, insufficiently and unskillfully moored with insufficient and defective cables; that the "Rickmers" was improperly and unskillfully managed and handled; and, because of these failures of duty, the "Rickmers" dragged her anchors on the night of December 25th, 1901, and came into collision with the "Stimson," causing damage in the amount of \$22,500.

The libel alleges also that the "Rickmers" was saved

from going ashore by holding onto the ground tackle of the "Stimson"; but this claim was abandoned.

Answering the libel, the claimant denies the charges of negligence and failure of duty, and denies that any act or failure to act on the part of the "Rickmers" caused or contributed to the collision; and alleges further that the "Stimson" herself was in fault in that she did not maintain a proper and efficient anchor watch and did not take steps within her power to avoid the collision or to minimize the results. These being the issues, the following are:

Facts Not in Dispute:

The "Rickmers" is a barque of about 2,200 tons. She arrived inward bound, in ballast, at Port Dungeness on December 24th, 1901, and came to anchor near Dungeness. There she remained until 11:30 o'clock p. m., when she weighed anchor and started up sound for Tacoma in tow of the tug "Tacoma," whose master was Captain H. H. Morrison, a licensed pilot. The master of the barque was C. Schwarting, who was making his first voyage to Puget Sound. About 4 o'clock p. m. on December 25th the tug and her tow had reached a point a little north of West Point light, and, the wind having freshened, the pilot and master of the tug directed his course to the eastward, signalled the barque to prepare to anchor, and took her to a temporary anchorage in Shilshole bay at a point about three-quarters of a nautical mile distant from and bearing north 33 degrees east (true) from West Point light. The wind at this time was westerly and was no more than a



fresh breeze. Lying at anchor in Shilshole bay at this time were three schooners, the "Mildred," of 411 tons, lying at a point which bore from West Point light north 23 degrees east (true), and distant about three-quarters of a nautical mile; the "Corona," of 394 tons, at a point which bore from West Point light north 38 degrees east (true), and distant about seven-eighths of a nautical mile; and the "Stimson," at a point which bore from West Point light north 29 degrees east (true), and distant about one and one-quarter nautical miles. The relative positions of these vessels at the time the "Rickmers" came to anchor are shown on the reduced reproduction of an official chart of Shilshole bay, upon which the position of the vessels was indicated by the witnesses. (See Claimant's Exhibits Nos. 1, 11 and 12.) The chart upon the opposite page is a photographic reproduction of the chart of Shilshole bay, showing the position of the vessels.

In coming to anchor the "Rickmers" dropped her port anchor, and about that time the port compressor block carried away and about fifteen fathoms of the port chain ran out. The barque sagged off to leeward and a collision with the "Corona" was imminent, but was avoided by the prompt and seamanlike action of the "Corona's" master, who hoisted his forestaysail and sheered his schooner in shore. The tug was standing by and, passing a line to the barque, hauled her back to her anchorage. The barque then dropped her starboard anchor, and lay in safety at both anchors until late in the evening, having rigged a relieving tackle on her port cable to take the place of her broken compressor. This compressor is an iron contrivance to hold fast to a link of the anchor chain by binding

it in a block made to conform to the shape of the link, and is intended to take the strain off the windlass while the vessel is at anchor. It is mounted on a large block of greenheart wood and is bolted through to the deck beams. It is spoken of by some of the witnesses as a riding chock.

At about 10 o'clock p. m. of December 25th the wind increased and blew violently from the south and south-east. The relieving tackle on the port chain carried away, a large hook in one of the locks having straightened out under the strain, and the barque began to drag, her starboard anchor having failed to hold her under the weather conditions then prevailing. More scope was given to the starboard chain, but she continued to drag and came athwart the bows of the "Mildred" and into collision with her, carrying away her jibboom and inflicting other damage. The barque finally broke loose from the "Mildred," passing along her port side, and then drifted down onto the "Stimson," having payed out in the meantime 90 fathoms of her starboard chain and having rigged a second relieving tackle on her port chain. When this second relieving tackle was rigged it was discovered that her port anchor and about ten or fifteen fathoms of her port chain had been carried away and lost.

The "Stimson" was lying to 105 fathoms of cable at a single anchor. Her master was ashore and the vessel was in charge of the mate. An anchor watch of one man was posted. From the time when the "Rickmers" came into collision with the "Mildred" to the time of her collision with the "Stimson" not less than a half-hour elapsed. The "Stimson's" watchman did not report to

the officer in command of the "Stimson" the fact that a vessel to windward was dragging, or was in collision or other trouble, until a very few moments before the collision between the "Rickmers" and the "Stimson" occurred, and no steps were taken by the "Stimson" to avoid or to minimize the effect of the collision. The vessels were in collision for some time and each received much damage. The ground tackle of the "Stimson" was not sufficient to hold them both and they sagged to leeward, locked together. At length they broke apart and the "Stimson" brought up on her own ground tackle. The barque drifted a short distance further and also brought up on her own ground tackle. The wind was very heavy and severe, blowing in gusts of great violence at times, but the weather was clear and lights and other objects could be seen without difficulty. Both vessels had the proper lights burning brightly. It was high tide at Shilshole bay on December 25th, 1901, at about 2:48 p. m., and extreme low tide at about 10:41 p. m.

Facts in Dispute:

If the opinions of expert witnesses are excepted, there are singularly few matters of evidence upon which the witnesses do not agree substantially. The claimant asserts that it is the custom of Puget Sound ports, where pilotage is not compulsory, for the master of the tug having a vessel in tow to act as pilot in taking vessels up and down the sound. The claimant has offered evidence to support this assertion and the libellant has not attempted to refute it.

Testimony of Capt. Burleigh, Record, p. 243.

Testimony of Alex. Baillie, Record, p. 246.

The claimant asserts further that the barque's anchorage was chosen by the master and pilot of the tug, and the libelant admits this to be true, but says that the barque's master expressed his satisfaction with the anchorage selected, whereas the master himself says that he did not want to anchor.

Testimony of Capt. Schwarting, Record, p. 33.

Testimony of Capt. Morrison, Record, p. 427.

In this connection it is but fair to say that Captain Schwarting's statement may well be held to mean that he did not desire to come to anchor at all, rather than an expression of dissatisfaction with the anchorage chosen; and this interpretation is in harmony with other parts of Captain Schwarting's testimony. See

Testimony of Captain Schwarting, Record, p. 57.

The testimony is conflicting to a certain extent as to what happened when the barque first came to her anchorage in Shilshole bay. The testimony of the master and officers of the barque is not clear in this and in other respects, owing to the fact that they were foreigners and gave their testimony in a language unfamiliar to them and did not comprehend fully the questions asked. Braue, the mate of the barque, was in the best position to know what really occurred. He says the wind was coming round West Point in gusts and that when the port anchor was dropped and the strain came upon the chain the port compressor block split, the compressor broke, and about

fifteen fathoms of the port chain ran away. He does not know whether or not the vessel dragged at this time.

Testimony of Braue, Record, pp. 61, 62, 73, 74, 75.

There was an attempt on the part of the libelant to show that the "Rickmers'" port chain broke and her port anchor was lost at the time the port compressor was destroyed; and, consequently, it was negligence not to "sight" the port anchor after the mishap to its compressor block. This contention is refuted entirely by the evidence. Mate Braue testifies that after the compressor broke the barque was brought back to her anchorage in part by heaving in on the port chain before dropping the starboard anchor.

Testimony of Braue, Record, pp. 65, 77.

Captain Schwarting testifies that the slack of the port chain was overhauled, and that the chain did not break, in his opinion, until the large hook on the relieving tackle straightened out when the vessel went adrift some six or seven hours later.

Testimony of Captain Schwarting, Record, pp. 32, 47.

There is no testimony tending to show that any of the ground tackle or appliances of the "Rickmers" was defective in any way; on the contrary, there is positive and direct testimony that the vessel was well found in these matters, and that her ground tackle and other appliances were inspected, in accordance with the custom of seagoing vessels, three or four days before she reached Cape Flat-

tery, and were found to be in first class order and condition. See

Testimony of Boehnke, Record, pp. 114, 115, 116.

Testimony of Schwarting, Record, pp. 38, 39,
and certificates of Lloyds' Proving House,
pp. 55, 56; certificates of Bureau Veritas, pp.
129, 130.

Testimony of Hill, Record, pp. 272, 274.

Testimony of Walker, Record, pp. 288, 289.

It is submitted that the whole testimony shows that when the "Rickmers" came into Shilshole bay to anchor there was a fresh breeze blowing, which came at times in strong gusts around West Point. When she dropped her port anchor it did not catch immediately, and the vessel, under the influence of the gusts which blew around the point, began to go to leeward directly in the way of the schooner "Corona." When her anchor caught, it brought up with a jerk upon the compressor, which split the compressor block and wrecked the appliance. Any claim that the compressor was applied prematurely, as the libelant's proctor asserted in his argument in the court below, is preposterous, because the vessel was increasing her momentum by every moment's delay, and the compressor was the only thing which could hold her and prevent a collision with the "Corona"; indeed, a collision was averted only by the fact that the "Corona's" master was a capable seaman, prompt to act in an emergency. Later in the day, if the "Stimson" had been handled as ably, the case at bar would not have occurred.

THE LAW OF THE CASE.

We propose to discuss first the twelfth assignment of error:

The court erred in allowing as damages five thousand dollars (\$5,000) for estimated permanent damage by impairment of the salable value of the libelant's vessel.

We desire to call the attention of the court to the character and weight of the testimony offered on this question, and we therefore quote verbatim from the record all of the testimony offered upon this point, in full confidence that this court will agree with the learned jurists who have passed upon questions of a like nature and will decide that there is nothing except mere conjecture upon which to base this allowance of damages.

Robert Moran, a shipbuilder, who was called by the libelant as one of three surveyors of the damage to the "Stimson," and who afterward executed part of the repairs, testified as follows:

- Q. Now, you have stated that this estimate of \$8,500 is an estimate of what it would cost to repair, as far as she could be repaired, estimating that such repairs were made; what, in your opinion, would be the fact as to whether the ship would be as valuable as she was before the collision?
- A. Well, it would be impossible; it could not be as valuable.
- Q. What, in your opinion, would be her damages, then, after being repaired as fully as

would be practicable, in accordance with your survey and in excess of the cost of making such repairs?

A. The damages this ship sustained and the depreciation, after the repairs had been made in accordance with these specifications, I should judge would be probably ten per cent.

Q. Ten per cent. of her value?

A. Ten per cent. of her value, in my judgment.

Q. In other words, her permanent damages, which could not be overcome by any repairs put upon her, would be ten per cent. in addition to the cost of repairing her as fully as she could be repaired?

A. That is my judgment.

Q. What would that amount to, in your opinion; in other words, what would have been the original value of the ship before the collision?

A. Well, I am not advised as to the exact value of the ship, but I presume her value new would be probably \$50,000 or \$60,000. I did not examine her particularly as to her exact value new. So that would make from \$5,000 to \$6,000—10 per cent.—permanent damages.

Testimony of Moran, Record, pp. 155, 156.

H. K. Hall, also a surveyor, called by the libellant to estimate the “Stimson’s” damages, and who afterward executed part of the repairs, testified as follows:

Q. You may state, also, Captain, whether the estimate by you of the extent of these damages, to-wit: \$8,500, for the repair of the vessel, and \$1,000 for discharging and re-

loading her, was a fair and reasonable estimate?

A. It was.

Q. I will ask you to state whether the repairs of the ship as contemplated by this report and appraisalment would put the ship back in the condition that she was immediately before the collision which caused these damages?

A. It would not.

Q. Well, why not?

A. Because the strain that had been put upon the vessel, the wrenching and the twisting that were caused by the collision, had damaged that vessel to an extent that could not be replaced by any repairs that could be put upon her.

Q. Would that affect the life of the ship?

A. It would take the vitality, I should say, of at least 10 per cent. out of the vessel.

Q. Now, for making the repairs contemplated by that survey: how much, if any, would you say that that ship was worth less than it was immediately before the collision which caused these damages?

A. Well, I should say she was worth 10 per cent. less.

Q. Well, how much in money—you are acquainted with the value of ships of that character—how much would you measure that in money—damage, I mean?

A. Well, I should say about \$6,000.

Testimony of Hall, Record, pp. 164, 165.

On cross-examination this witness testified:

Q. You say that you estimate the permanent damages to this schooner at 10 per cent.?

A. Yes, sir.

Q. How did you arrive at that?

A. I placed the valuation of the vessel at about \$60,000.

Q. Well, was there anything strained or broken about the vessel or the hull of the vessel?

A. There was something remarkable that showed a tremendous strain that had been wrought upon that vessel; the masts from the deck down to the keelson, where it was stepped into the keelson, had been strained, a severe strain that came upon the masts had split the keelson for the length of 60 feet, and it was ruined.

Q. Did you renew that?

A. Yes, sir.

Q. That is included in your bill, is it?

A. Yes, sir.

Q. Now, after you renewed them, did not that make her as strong as before?

A. Made her as strong as before, that portion of the work, fully as strong as before.

Q. And that would apply as to the other repairs that you made, would it not?

A. All the other repairs; yes.

Q. Be just as good as they were before?

A. As far as the repairs are concerned; but it don't relieve the vessel from the strain.

This constitutes all the testimony bearing on the question, and upon this testimony the court below assessed damages on this item in the amount of \$5,000. An analysis shows that there is not one single fact other than the mere opinion of the witness upon which to base a conclusion. There is no testimony of any physical defect not capable of economical repair; on the contrary, the testimony is voluminous, particular and minute as to the repairs that were made, and there is not a single word in it which shows or tends to show that complete repairs were not made. The entire sum expended, for which the court below allowed damages in full in the sum of \$9,388.00, is in itself sufficient to warrant the belief that neither the owners nor the builders stinted themselves in any particular in making these repairs.

Judge Woodruff of the Circuit Court for the Eastern District of New York had occasion to pass upon this question in the case of *Petty vs. Merrill* on appeal from decree of the District Court allowing damages exactly like the damages allowed in the case at bar, upon testimony which was of a like nature. In his opinion Judge Woodruff says:

“I am not satisfied that, upon such testimony, five hundred dollars should be allowed in addition to the cost of repairs. It rests upon no certain or definite grounds for an estimate. The witness had stated all the cost of making the vessel as good as she was before; and then, having stated that she would, nevertheless, not be so valuable, he states that she would be as serviceable; and, finally, the cross-examination shows that his estimate

of five hundred dollars less in value rests upon a conjecture, based upon what he states as a general result of all collisions—that the vessels sustain a damage that will show when they grow old. This is altogether too vague, uncertain and unreliable to warrant the inference as a fact in this particular case that, beyond any injury which the witness could detect by his careful examination as an expert in building and repairing vessels, she had also received some undiscovered and undiscoverable damage which, although it did not render her less serviceable, yet detracted five hundred dollars from her value because it would show when she was old. The elements of calculation or estimate of amount are wanting. Palpably, the assumed fact of such hidden injury and its extent and character are conjectural, and the amount of money required as an indemnity is even more so. It may be conceded that the shock of a violent collision will be felt throughout the vessel; but the injury from that cause, if any, is not to be estimated, and cannot be determined as a matter of fact in a court of justice, by reasoning on any general rule such as appears to have guided the witness, if, indeed, his estimate was anything more than a rough guess without any specific facts to support it. No two collisions are alike in any of their circumstances or results. The injury in any given case must be quite peculiar if the skill of the shipbuilder, at liberty to employ all the expense requisite, is incapable of repairing it; and when a vessel is made as serviceable as she was before, any conjecture that she is not as valuable, or that, when she is old, some damage will appear, as a result of the collision, not now discoverable, is too vague and uncertain to warrant a

finding of the conjectural amount of damage. There may be proof of injury which, though known, cannot be repaired without unreasonable cost, where the party to be charged will be benefited by an allowance for actual depreciation, because an attempt to make complete repairs would involve an expense greatly disproportionate to the amount of such depreciation. But, in general, estimates of depreciation, founded on speculative opinions of the probable effect of a collision, where no such effect is known or discernible, and estimates of diminished value, founded, as they sometimes are, upon the idea that, although the vessel is as serviceable as she was before, yet she will not sell for as much as she would before, are not of sufficient reliability to warrant the taking of the money of one party and awarding it to another.”

Petty vs. Merrill, 9 Blatchf. 447, s. c. Fed. Cases No. 11,050.

Judge Woodruff’s reasoning is sound in principle, and has been followed whenever an attempt has been made to mulct a respondent in damages for injuries of this character. Judge Brown of the District Court for the Southern District of New York cites and follows *Petty vs. Merrill* in the case of the “Excelsior” (17 Fed. 924), and, later, follows the principles of the case in deciding in favor of an allowance for permanent depreciation in the “Helgoland” (79 Fed. 123), in which he points out clearly the rule to be followed, saying:

“The allowance here is not on the vague notion that she is not as good, or will not sell for as

much, simply because she has been in collision, when everything discoverable has been apparently rectified and repaired. Here what remains is palpably not repaired, and could not be without great expense.”

In *Sawyer vs. Oakman* the same court decided the same question in the same way, the opinion stating :

“The sum claimed by the libelants for estimated depreciation I must disallow. It is, as stated in the commissioner’s report, ‘to a very great extent a matter of conjecture.’ On very clear proof of actual depreciation and of the extent thereof, where it was shown that from the peculiar nature of the injury it was impossible to make the vessel as good as she was before her injury, I have, in one case of collision, made an allowance for depreciation over and above the loss of the use of the vessel and the necessary expenses of repairing, etc. But such allowance should only be made upon proof that is clear and that furnishes a safe guide in determining the amount. From the nature of the subject, the opinions of witnesses, resting largely on grounds that have no relation to the actual value and condition of the vessel when completely repaired, are wholly unsafe and can be tested by no appreciable rule of estimate. To act upon them is to expose respondents to great danger of injustice, when substantial justice to the libelants does not require it. The commissioner reports that the schooner, by the repairs put upon her, was restored so as to be as strong as she was before the accident, and that she was thereby rendered as valuable to her owners for their own use and employment as she was

before. If that be so, then she was as valuable to any other persons for their use and employment. But he is of the opinion that she would not sell for as much as she would have sold for if the disaster had not occurred. I think it quite probable that market price is, in such a matter, so sensitive that it might be difficult to satisfy a proposed purchaser that the vessel was as valuable as before, or difficult to satisfy him that he would in future, should he desire to sell, be able to produce that conviction in the mind of a purchaser from himself. But the fact being true that the vessel is just as good as she was before the accident, the respondents having, by the sum otherwise awarded as damages, made her so, every attempt to estimate the influence of a purchaser's timidity or incredulity on her market value must be of the most uncertain and vague conjecture, not resting on any sound reason. It is quite too loose to be the foundation of a charge against the respondents."

Sawyer vs. Oakman, 7 Blatchf. 290.

s. c., Fed. Cases No. 12,402.

s. c., 5 Am. Law Rev. 381.

Sawyer vs. Oakman presented several questions of interest and has been cited extensively, and is cited as an authority by the United States Supreme Court. See

Smith vs. Burnett, 173 U. S. 433.

The same question was decided in the case of the "Favorita," the court holding:

“The alleged depreciation in the market which is said to result from the mere fact that a vessel has once been injured and repaired, depending upon prejudice or apprehension, when the intrinsic value has been made good, is too indefinite and variable to be allowed as damages.”

The Favorita, 8 Blatchf. 539.

s. c., Fed. Cases No. 4,695.

The Favorita went to the Supreme Court on the whole record and was affirmed. See

The Favorita, 18 Wall 598.

Judge Benedict of the District Court for the Eastern District of New York decided the case of the “*Osceola*” by the same rule, saying:

“The testimony certainly indicates that for some reason or other the boat was not as available after the repairs as she was before the collision, but it does not appear to me to be sufficiently certain to justify the allowance of any additional sum as damages caused by the collision. It is hardly a case where intrinsic and inevitable diminution of value is shown to have resulted from the collision, because it was not possible to make complete repairs.”

The Osceola, 34 Fed. 921.

In the case of the “*Isaac Newton*,” Judge Nelson had occasion to pass upon this question, and disallowed an item for permanent depreciation, saying:

“This item is founded on the evidence of the

master and the mate, and is a matter of opinion, resting upon no fact stated except that the vessel leaked more after the repairs than before the damage occurred. The shipmaster who repaired her states that she was thoroughly repaired and was put in as good condition as before the injury. The work was done under the direction of the master of the vessel and, from the sum expended in making the repairs at his instance, it would be somewhat strange if the depreciated value should be as large as he states.”

The Isaac Newton, 4 Blatchf. 21.

s. c., Fed. Cases No. 7,091.

The Supreme Court sustained Judge Nelson’s ruling as to conjectural and speculative damages, citing the “Isaac Newton” in the case of the “Conqueror” (166 U. S. 110, at page 128), and referring to an earlier case, the “R. L. Mabey” (4 Blatchf. 439), which has been taken on appeal to the Supreme Court and there affirmed. See

Sturgis vs. Clough, 1 Wall 269.

The appellee undoubtedly will cite to the court cases in which an allowance for permanent depreciation has been sustained, but an examination of the authorities will show that in each case the allowance is based upon some patent, visible, known and certain defect resulting from the collision which is not capable of economical repair. The case of the “McIlvane,” recently decided in the District Court for the Eastern District of Virginia, is of this class

and sustains clearly the contention of the appellant in the case at bar.

Restitutio in integrum is the rule of damages in collision cases, with this modification: If the injuries are such that all of them are not capable of economical repair, damages in consequence thereof for permanent depreciation may be allowed if proved. In making the repairs, ordinary business judgment and discretion must be employed; and, if the repairs made exceed the damages which would have been assessed on a total loss, such excess will be disallowed. If, therefore, ordinary business judgment and discretion say that the loss of putting a vessel in repair is not warranted, damages for the consequent permanent depreciation may be allowed. But such damages are not allowed unless a permanent depreciation of this character is proven, of which there is no proof in the case at bar.

There is not a word of testimony in the case showing or tending to show that the "Stimson" was not, after repair, as serviceable, and indeed she was in the same trade, and performing the same functions and presumably acquiring the same earnings, as before.

As to the Sixteenth Assignment of Error:

The Court erred in allowing interest from any date prior to the date of the final decree herein.

This Court has decided recently in the case of the "T. C. Reed," or *Burrows vs. Lownsdale*, 133 Fed. 250, that it is the settled law of this country in admiralty that

whether or not interest on the amount of the damages in a cause of collision shall be allowed by the court of the first instance, or by the appellate court, is a matter for the discretion of the court, citing as authority *Hemmenway vs. Fisher*, 20 How. 258; the *Ann Caroline*, 2 Wall 538; the *Scotland*, 118 U. S. 507; the *North Star*, 62 Fed. 71. The Court held that the discretion of the Court did not extend to an allowance of interest for damages recovered for personal injuries. An examination of the authority cited will show that in each case the damages assessed were as for a total and not a partial loss and that in every case where any one of these authorities has been followed and interest allowed the facts show a total loss. Indeed, while these cases undoubtedly are authority for the proposition decided in the “T. C. Reed” it will be noted that in each case interest was refused. We submit that interest is not to be allowed as “interest” strictly, but its allowance is a tool in the hands of the Court for working even-handed justice between the parties. Its purpose is so stated by Chief Justice Taney in his opinion in *Hemmenway vs. Fisher*:

“More in cases of collision and salvage, and more especially in the latter, it is impossible to fix the sum that ought to be awarded with absolute certainty by any rule of calculation. It must depend mainly upon estimates and the opinions of persons acquainted with the subject; and acting upon mere estimates and opinions, different minds unavoidably come to different conclusions as to the amount proper to be allowed.

“And it will sometimes happen in an admir-

alty case, that this court will think that the damages estimated and allowed in the circuit court are too high, and yet the opinion here may approximate so nearly to that of the court below, that this Court would not feel justified in reversing its judgment. Besides, new testimony may be taken here in an admiralty case, and a new aspect given to it. No rule, therefore, fixing any certain rate of interest upon decrees in admiralty, whenever the decree is affirmed, could be adopted with justice to the parties. And a discretionary power is reserved to add to the damages awarded by the court below, further damages by the way of interest in cases where, in the opinion of this court, the appellee upon the proofs is justly entitled to such additional damages. But this allowance of interest is not an incident to the affirmation affixed to it by law or by a rule of court. If given by this Court, it must be in the exercise of its discretionary power, and, *pro tanto*, is a new judgment.”

Hemmenway vs. Fisher, 20 How. 258.

We are not aware of any case where interest has been allowed by the court of the first instance except in the way of quasi-punitive damages, or for the purpose of working substantial justice. The case at bar does not call for the exercise of such power. Each and every claim of the libellant was allowed to the full amount, and the record shows that the libellant charged everything which, by any stretch of imagination, ought to be charged, even including a doctor's bill for attendance upon a sailor who was scalded some six weeks after the collision occurred (see Record, p. 562.)

Although the libellant's surveyors—two of whom were employed afterward in making repairs, and who therefore may be assumed to have made liberal estimates of the amount of the damage—placed the probable cost of repairs to the "Stimson" at \$8,500, we are now called upon to pay the sum of \$21,612.75, or, excluding the interest charge, \$18,680; so that it does not appear that any allowance of interest is required to meet either of the purposes for which interest has been allowed in the admiralty.

Certainly the facts in this case do not show any ground for inflicting punitive damages upon the appellant. The "Rickmers," her master, officers and crew were strangers to these waters. She took a pilot on board and obeyed his directions in all matters. The court below holds the "Rickmers" responsible for the acts of the pilot, and a careful reading of the opinion justifies the conclusion that the pilot's selection of the anchorage is the only act of negligence of which the court finds the "Rickmers" guilty. Certainly the anchorage chosen was not so obviously improper that the "Rickmers" should be held in punitive damages because she broke from her holding ground under stress of weather which all the witnesses agree was a tempest while it lasted, and, drifting helplessly, blown about by the fury of the elements, under no control or possibility of control, came into collision with a craft which was at least a full half mile from the anchorage from which the "Rickmers" had been blown away. We submit that the case is quite different from that of a vessel under control which comes into collision with a ves-

sel at anchor because of an incompetent lookout or some fault of navigation which shows a heedless disregard for the safety of others. In such cases punitive damages are proper; but we submit to the conscience of the court the appellant in the case at bar, even under the facts as found by the court below, has been guilty of no act which warrants anything more than strictly compensatory damages.

The unliquidated burden of a helpless creature should not be added to in this manner. It was essential and proper that the "Rickmers" should take the time for which interest is given in order to defend herself against excessive claims in this, at best, a complicated case, arising under circumstances whereby her claimant can, at the most, only be held for what we may term legal or technical fault, subsequently involved with the dereliction and fault of libellant.

If the views of this Court shall coincide with the appellant upon this question, we submit that the case of the "North Star" is authority for modifying the decree in this respect, that case holding:

"The appellate court, when differing from the conclusions of the court below as to the grounds on which that court allowed interest on the damages awarded for collision, may modify the decree by excluding such interest."

The North Star, 62 Fed. 71.

The opinion being silent, no one can understand why the learned judge below allowed the "Stimson" interest.

Aside from the above reasons, the case being one of unliquidated *partial* loss, the interest clearly should not stand, as the general rule is that interest is only recovered in case of *total* loss. See

Sutherland on Damages, Vol. 4 (3d edition), Sec. 1294 and cases there cited.

Spencer on Marine Collisions, pp. 377 and 338, and cases there cited.

See, also,

“*The Alaska*,” 44 Fed. 498.

“*The Syracuse*,” 97 Fed. 978.

Brent vs. Thornton, 106 Fed. 35.

As to the Fifteenth Assignment of Error:

The Court erred in allowing libelant full demurrage of its vessel at the rate of fifty-eight dollars per day during seventy-four days of detention, and in addition thereto her necessary expenses during such detention.

The testimony upon which this item of damages in the nature of demurrage was allowed by the court was as follows:

By Capt. Peterson of the “*Stimson*”:

Q. How much time was lost by reason of this collision on that ship?

A. Ninety days.

Q. In what business was the schooner engaged at the time?

A. In the coasting trade, the lumber carrying trade.

Q. Where were you running?

A. Between Ballard and San Pedro.

Q. Did you have a charter for her cargo to San Pedro?

A. Yes, sir.

Q. How was that charter, with reference to value of the preceding charter? The one immediately preceding it, the price?

A. Well, it was at the rate of \$7.00 a thousand.

Q. Was it the same as the one before?

A. Yes, sir.

Q. How long did it take you to make the round trip before, immediately before this time?

A. Two months.

Q. What is the average time for making this trip to San Pedro?

A. Well, about two months, although we made one trip in fifty-two days, but it was about two months.

Q. You had been carrying for a little over a year in the same trade, had you?

A. Yes, sir.

Q. About how many trips did you make a year?

A. About six in a year.

Q. The average time would be about 60 days for a round trip?

A. Yes, sir.

Q. You say you had the same charter price for

the voyage for which the ship was loading at the time of this collision as the one immediately preceding it?

A. Yes, sir.

Q. Now what was the net earning of the ship for the charter immediately preceding this trip?

A. Well, I remember we had \$3,500 dividends.

Q. Three thousand five hundred dollars was the net earnings over and above the expenses of the trip for that trip at the same rate of charter?

A. Yes, sir, the same rate of freight.

Q. What do you say as to whether your expenses would have been the same on this trip?

A. Well, practically the same.

Q. If you had been permitted to make it?

A. Yes, sir.

Q. What would have been the value of the charter for that trip?

A. The same as the trip before.

Q. Did you lose that charter?

A. No, I think not.

Q. Did you not have to carry that for \$6.50 a thousand after you were repaired?

A. I am not sure about that; I could not swear to that.

Q. You could not swear as to that, you lost 90 days, you say?

A. Yes, sir.

Q. Now, what would have been the net earning capacity or value of that ship for 90 days?

A. Well, it would be a trip and a half.

Q. Well, how much would that be?

A. About \$5,200 or \$5,300 or something like that.

Examination of Peterson, Record, pp. 204-206.

On cross-examination, the witness testified:

Q. What is the capacity of the "Stimson," how much lumber could she carry?

A. She carries a little over 900,000.

Q. Well, now you spoke about—

A. Say about 920 or 950, but about 920,000 on an average.

Q. The usual price is \$7.00 per thousand?

A. Yes, at that time.

Q. From here to San Pedro?

A. Yes, sir.

Q. What freight do you bring from San Pedro?

A. Coming up in ballast generally; would sometimes bring a little freight.

Q. It takes two months to make the round trip?

A. Yes, sir.

Q. The total earnings of your schooner for two months, the gross earnings would be \$6,856; is that correct?

A. Yes, sir.

Q. How much would it cost to load that lumber on the schooner, that 900,000 feet of lumber?

A. Well, it cost us about 40 cents a thousand; that is besides the sailors. I do not know how we figure that.

Q. How much does it cost to unload it, outside of the cost of the sailors?

A. It will cost us— excuse me, we have to give the men 40 cents an hour and two meals a day. I do not know what that would amount to but that is what they charge us here in Ballard for loading the vessel. I don't know how much that amounts to.

Q. If you paid 40 cents a thousand for loading, the loading would cost you about \$380?

A. Something like that.

Q. How much would it cost you to unload?

A. It would be about the same.

Q. About the same for unloading?

A. Yes, sir.

Q. Now, 80 cents per thousand would represent the cost of loading and unloading at both ends.

A. Yes, sir.

Q. That is correct, is it?

A. I made a mistake; it is 40 cents an hour; I did not mean 40 cents a thousand feet.

Q. Can you tell how much it would cost per thousand to load it, how much would it cost to load 950,000 feet of lumber on the "Stimson"?

- A. We load her for about 20 days.
- Q. Can you give us in money what it would cost to load her?
- A. I never figured it that way.
- Q. Was it as much as \$1,000?
- A. No, not quite as much as that.
- Q. Was it \$500?
- A. Yes, sir.
- Q. Seven hundred and sixty dollars?
- A. Maybe about \$800.
- Q. And the same amount to unload it?
- A. Yes, sir.
- Q. That would be \$1600.
- A. Yes, sir.
- Q. How much crew did you carry?
- A. We had ten all told.
- Q. And what is the wages of the crew per month including yourself?
- A. Five hundred and fifteen dollars exactly per month.
- Q. Now there was some cost of provisions for these few months?
- A. The stores and the ship's chandlery amount to about \$600 or \$700.
- Q. Well, then the cost of making the round trip from here to San Pedro with 950,000 feet of lumber is about \$3,300?
- A. Yes, sir, that is about as near as I can tell.
- Q. So that the net earnings of the schooner with-

in any two months would not exceed over \$3,500?

A. No, something like that.

Q. That is correct, is it?

A. That is pretty near, as near as I can guess at it.

Q. You do not count anything in the way of interest, or anything like that?

A. No.

Examination of Peterson; Record pp. 231-234.

Mr. C. D. Stimson, one of the owners of the schooner "Stimson" testified on this question as follows:

Q. What trade was she (the "Stimson") engaged in?

A. In carrying lumber from our mill coastwise to San Pedro and down there.

Q. What was the average period consumed in making a round trip, a round voyage?

A. We made six trips in twelve months, a little over six, pretty near six and a half.

Q. Was she under charter at the time of the collision?

A. Yes, sir.

Q. For carrying lumber to San Pedro?

A. Yes, sir.

Q. What is the charter rate per thousand feet?

A. Seven dollars per thousand.

Q. On the lumber?

A. Yes, sir.

Q. What was the charter rate for the preceding trip?

A. Seven dollars.

Q. How much time did the preceding trip occupy?

A. I do not remember the date but very close to sixty days, I think a little less.

Q. Do you know what the net earnings, that is, after paying all the expenses of the preceding voyage was, what the net earnings of the "Stimson" was?

A. It was very close to \$3,500. I think a trifle over \$3,500.

On cross-examination, the witness testified:

Q. That was carrying 950,000 feet?

A. That was carrying—I do not just remember what cargo she had on at that time but I remember he turned in a little over \$3,500.

Q. At the time of the collision she was loaded only to the extent of 650,000?

A. She had on 650,000 and was partially loaded.

Q. And as near as you can give the profits what is the usual profits that the "Stimson" has made on the round trip from here to San Pedro?

A. I never have made an average of it.

Q. Would it average as much as \$3,500?

A. At \$7.00 a thousand, yes, it would.

Q. Well, have you been paid \$7.00 a thousand?

A. We got \$7.00 a thousand for a number of trips previous.

Q. And that would be an estimate, \$3,500 for a round trip?

A. Yes, sir.

Q. In sixty days?

A. In sixty days, yes. We made six trips in twelve months and a little over.

Testimony of C. D. Stimson, Record pp. 238-240.

Mr. F. S. Stimson, one of the owners of the schooner "Stimson," testified on this question as follows:

Q. Do you remember what the net earnings of the "Stimson" was for the voyage just preceding?

A. About \$3,500.

Q. Did she average that?

A. Yes, sir.

Q. She had a charter at that rate at that time when she was loading?

A. Yes, sir.

Q. Was it for a full cargo?

A. Yes, sir.

Q. That is, her charter authorized her to take at that rate all her carrying capacity?

A. All she could carry.

Q. The average period for her trip was how long?

A. Two months.

Q. And her loss of time by reason of this accident?

A. There was three months.

We submit that the damages for the detention of the libelant's vessel have been measured by a rule which is unfair to the appellant here. The testimony shows that the schooner was employed by her owners in carrying cargoes of lumber from the owners' mill at Ballard to points in southern California, and that if she was under charter, it was a charter made by the Stimson brothers as the owners of the Stimson Mill Company with the Stimson brothers as owners of the schooner "Stimson"; in other words, the transactions were entirely in the hands of the libelants. There is an established and recognized trade in the transportation of lumber from Puget Sound ports to ports in southern California and many vessels similar in kind and character to the "Stimson" are engaged in this trade. The damages to the libelant for the detention of its vessel are not to be measured by the use value of the particular vessel unless that use is of particular and special value, which must be alleged and proved. Such damages are to be measured by the market price for such use. When there is no market price, evidence of the profits that she would have earned is competent. The record shows that the libelant did not allege a special and particular value and use of its vessel, but has proved its damages as though such allegations had been made, and has offered a line of proof which is competent only in cases where no market price exists. The burden is upon the libelant to prove his damages, and this burden he has seen fit to side-step by proving damages upon a theory which the law does not support.

The proof of the expenditures of libelant's vessel during the time she was laid up for repairs is entirely inadequate. This collision happened on December 25th, but the libelant put in proof of the vessel's expenditures from December 10th to a time fifteen days prior to the completion of repairs. This seems to have been done on the assumption that the expenses of the vessel would be about the same for any period of fifteen days. We submit that no reason is shown in the record why the expenses, if any, should not have been shown as they occurred and not by any rule of thumb method of approximation when no necessity exists therefor. See

Record, pp. 230, 231, 234, 235, 545, 546, 560.

The libelant has charged also, as one of the expenses incurred because of and made necessary by the collision, a full complement of sea stores, which could not have been damaged by the collision. In fact, the record shows that all the expenses of the vessel of every name and nature were charged up to the "collision account." The libelant claims that the equivalent of these stores were used in the repair of the vessel, but we submit that there is no proof of anything of the kind beyond the mere guess work of the schooner's master. Guess work seems to be a component part of every branch of the libelant's case. As we purpose to show later, the libelant has nothing but guess to offer to show any negligence on the part of the "Rickmers", her officers or her crew. The witnesses guess as to the net earnings of the "Stimson". They guess as to the expenditures which were made for repairs, and guess as to the amount of material used in

making the repairs which they ask the appellant to pay for. We submit that no necessity can be shown for this kind of testimony. The “Stimson” was in her home port when these repairs were made. Her owners were close at hand, and their books of account could have been produced to show what the actual figures were as to all these items. The cost of making these repairs exceeds the estimates of the libelant’s surveyors and is *nearly double* the estimate made by Lloyds’ surveyors. Under these circumstances we think the proof does not justify the amounts allowed by the court below.

It is absolutely unreasonable that the provisions and gear of this schooner, with a crew of eleven, should be \$2,620.44 during the period of detention. The low cost of maintaining a sailing vessel is where she makes her money.

As to the Sixth Assignment of Error:

The court erred in finding as a matter of fact that all other vessels similarly situated at the time of the accident were held securely by their anchors; and further erred in burdening the “Rickmers” with any presumption of fault because of this fact so found.

The court below has burdened the “Rickmers” with a presumption of fault because she was the “aggressor”, and has stated the presumption is strengthened by the fact that the other vessels exposed to the same force were held securely by their anchors. The record does not sustain this conclusion. The testimony is that the schooner “Corona”, whose anchorage was most nearly like that

of the “Rickmers”, dragged her anchors at about the same time that the “Rickmers” went adrift.

Testimony of Capt. Anderson, Record, pp. 146.
147.

The testimony further shows that the “Rickmers” and the “Corona” lay closest in shore and that the force of the wind came in gusts around West Point, so that the situation of these two vessels actually was more exposed than that of vessels lying further off shore.

Record, pp. 144, 148, 149, 151.

As to the Fifth Assignment of Error:

The court erred as a matter of law in burdening the “Rickmers” with a duty of meeting a presumption of fault under the facts and circumstances of this case; and erred further in placing upon the “Rickmers” the duty of a vessel in motion and under control to avoid a collision with a vessel at anchor.

The court below seems to have decided this case upon the theory that the “Rickmers” had been caught red-handed in an act of recklessness, and that she should be held to the duty of proving beyond a reasonable doubt that she was innocent. All the responsibility of a vessel in motion and under control to explain a collision with a vessel at anchor was placed upon the appellant, and the libelant was relieved of the burden of proving any negligence whatever on the part of the “Rickmers”.

It undoubtedly is a salutary rule of the admiralty

that a vessel in motion and under control should be called upon to explain fully why she should not be held in fault for a collision with a vessel at rest. The reason is self evident. A vessel at anchor is inert and helpless except to a limited extent and, if she is anchored in a proper place and her whereabouts can be seen, vessels in motion and under control can and should avoid her. But a vessel in motion and not under control is more helpless than a vessel at anchor because she is the sport of the wind and tide and can go only where they take her. She can neither protect herself or others. To burden such a vessel with all the presumptions which exist against a vessel in control is unwarranted. The reason for the rule being wanting, the rule itself is abrogated. The presumption against the "Rickmers" should extend no further than to require her to prove that her ground tackle was sufficient and in good order; that it was used in a proper and seamanlike way, that the anchorage was a suitable and proper anchorage under the circumstances. This she did fully, and her testimony in this regard stands unrefuted.

Some courts are constantly falling into the error of enforcing against vessels adrift and striking another at rest the general presumption of fault against the moving vessel.

Such is not the law except in cases where the moving vessel is in command, or where she becomes out of command through some negligent act *within her control*. Time out of mind this has been so. Nearly all the ancient codes contain express provisions in this regard. See

Article XIV., Laws of Oleron, and Article XXVI.,
Ordinances of Wisbury.

Black Book of the Admiralty, Vol. 4, p. 272.

These laws are conveniently and readily found
now in Vol. 30 of the Federal Cases (appen-
dix); see pages 1178 and 1191.

The Dantzic ship laws were also positive in dividing
the loss in a case such as this.

See Articles 49 and 50 of those laws, found in Vol. 4
of the Black Book of the Admiralty, page 349.

We particularly desire the court to read the ancient
and fundamental doctrine in this connection found in Vol.
3 of the Black Book of the Admiralty, and particularly at
pages 289 and 291 of that volume, where facts in point
with the case at bar are discussed, and the rule for which
we contend, justifying a division of the loss, is fully recog-
nized. It is there said:

“If a ship or two or a number of ships or
vessels shall enter into a port, or a roadstead, or
a creek, or any other place, and shall enter it to-
gether and shall moor, each ought to moor at such
a distance from the others that they can not in
any way do any damage to one another. Never-
theless, if by chance, whilst they are riding in
such a place, bad weather overtakes them, each of
them ought to moor herself well and strongly, and
do all *in her power* that not one of them shall suf-
fer any damage, and still more that none of them
shall do damage to the other. And if by chance,
during such bad weather, the tackle of any of the
ships or vessels shall fail her, and she shall drive

against the others and do them any damage, if the ship or vessel of which the tackle has failed has done all in her power to moor herself, and the tackle, which she had, has been good and sufficient for that ship or vessel and for one still larger than she is, the damage which has been done shall not be made good to the vessel which has sustained it, because it has not been caused by the fault of him to whom the vessel, of which the tackle has failed, belongs, still more for another reason, because she has done all in her power to moor herself; still further, because the tackle which has failed was good and sufficient for that ship or vessel and for one larger than her. And accordingly for the reasons above said she is not bound to make compensation for the damage which she has caused to any vessel. Nevertheless, if the managing owner of that ship, or vessel, of which the tackle has failed, shall have put out a cable by which she was moored less strongly than she ought or could have been, and the tackle which he had has not been sufficient for his ship or vessel nor even for a smaller one than her, if for those reasons above said his ship or vessel shall cause any damage, he is responsible to make good and compensate all that damage to those who have suffered or sustained it, by fault of weak or of bad tackle, which he has brought with him. Wherefore every managing owner of a ship or vessel must beware and ought to take care, that he does not use weak tackle to moor himself with, and that he does not carry cables which shall be insufficient, in order that the penalty and conditions aforesaid may not be imposed upon him.”

Where is there a word in this case which prevents the

“Rickmers” from invoking these old and wise principles? Reason and common sense tell us from the measurements that more cable meant trouble with the “Mildred” or the “Corona,” or both, and there is no evidence opposed to her large amount of testimony establishing that her tackle and equipment were everything which seamanship, foresight or care could require.

The best reasoned modern decisions are all to the same effect. The reason and justice of such law are also apparent. Manifestly a helpless, inanimate ship cannot be held to the same duties as one capable of man’s control. There is no more sense or justice in so doing than there would be in holding a prattling babe or a wandering idiot or insane person up to the standard of legal duties required of grown man fully *sui juris*.

We should like to see some court clearly define these lines, as there is a tendency for much of our case law in this connection to get on the wrong drift, because these lines of exceptions to the general rule have not been clearly drawn. Should this court agree, we sincerely trust it will aid both bench and bar by so doing.

Judge Hanford himself in a very recent case (the Admiral Cecille-Multnomah collision, not yet reported) expressly recognizes the principles for which we here contend, and yet the learned judge failed to apply them in favor of the helpless “Rickmers,” acting, as she was, without actual or presumptive wilfulness or intent to injure the “Stimson,” but applies them in favor of the “Multnomah,” a steamboat under way, in the case referred to. The reasoning of the learned judge and the authorities of the

Supreme Court of the United States cited by him being exactly in line with our contention here, that it will not do for the “Stimson” to say that her greater diligence, by the watchman calling the full crew to his assistance, or the failure to hoist or clew a sail, or to promptly call the aid and judgment of her officer in command, or to have observed and prepared to meet the danger during a full half hour for that purpose, *would not* have prevented the collision. She must show that such diligence and efforts on her part *could not* have done so.

A duty incumbent by reason of fixed law existing for time immemorial should be enforced with the same exactness as a duty created by statutory law, which duties were under discussion by the Supreme Court of the United States in

Richelieu Nav. Co. vs. Boston Ins. Co., 136 U. S.,
p. 422;

Belden vs. Chose, 150 U. S. 699, and

U. S. vs. St. Louis & Miss. Trans. Co’y, 184 U. S.
255.

The ancient *lex scripta* of the maritime law, when recognized by present day usages and decisions, is entitled to all the weight and application of modern statutory or written laws.

As to the Eighth Assignment of Error:

The court erred as a matter of fact and of law in finding that the anchorage of the “Rickmers” was chosen improperly.

We are not aware of a single word of testimony in the record which shows or tends to show that the anchorage chosen by the pilot of the “Rickmers” was in itself unsuitable or improper. The testimony of all the witnesses, including the libelant’s witnesses, agree upon this point. Richard Sennin, mate of the “Stimson,” a witness called by the libelant, testified as follows:

Q. Well, the position of the “Rickmers” was rather in a protected place, was it not, from the wind?

A. Yes, sir, it ought to be; it was the closest under the bluff from the land.

Q. Considered a safe place to anchor?

A. Well, sometimes it might be and sometimes it might not.

Q. Well, under ordinary circumstances?

A. Well, that night it was not a safe place anyhow. The wind was blowing from the south southwest and it was not a safe place there.

Q. It was safer than where the “Stimson” was that night?

A. Yes, sir.

Q. How was it after five o’clock in the evening?

A. At five o’clock in the evening the wind was south southwest.

Q. Was it blowing very hard then?

A. It was not blowing very hard then.

Q. You considered it a perfectly safe place to anchor where the “Rickmers” was at that time?

A. It might have been safe then but not with that kind of a chain.

Record pp. 193, 194.

Capt. H. H. Morrison, pilot and captain of the tug,
a witness called by the libellant, testified as follows:

Q. Describe what occurred there when you first came in (to Shilshole bay) and what situation you found.

A. I went into Shilshole bay and found three vessels loading, and when he got his anchor out, I took her up ahead and a little to one side of the "Corona" to get in the best berth I knew, and he let go his anchor and seemed to be pleased with the berth; and she dragged.

Q. I will ask you to state what that situation is, whether it is a good anchorage there?

A. It has been a harbor ever since I have been tugboating. Ships have been riding there ever since I can remember.

Q. How long have you been the master of a tugboat?

A. Fourteen years, going on fifteen.

Q. Have you frequently anchored sailing vessels there before?

A. Yes, sir.

Q. You are familiar with the anchorage in Shilshole Bay?

A. I am.

Q. And in the different portions of Shilshole Bay?

- A. I have sounded it all over a dozen times.
- Q. What is your opinion as to whether the berth to which you took the "Rickmers" was or was not a good safe berth, considering the weather, the character of the weather, the character of the wind, and all other circumstances including the location of the other ships?
- A. Well, I consider it the best berth which was vacant at that time.
- Q. What do you say as to whether it was a safe berth, in your judgment?
- A. I consider it a safe berth.
Record, pp. 420, 421.

Capt. Whitney, a witness called by the libelant, testified as follows:

- Q. Captain, are you acquainted with Shilshole bay and the character of that bay as a harbor?
- A. Well, yes, I think I am. I have laid there for shelter a good many times.
- Q. What do you think of its general character for a harbor in the southerly winds and storms?
- A. I consider it a pretty good harbor. I have laid there with logs and they have to be taken care of pretty well.
- Q. I wish you would examine this diagram which is marked Claimant's Exhibit No. 12. Now, as appears on this diagram, on the night of Dec. 25th, 1901, the following vessels were at anchor in Shilshole bay, the

“Stimson” approximately at the point or cross at the letter “S”, the “Corona” at the point indicated by the cross at the letter “C”, the “Mildred” at the point indicated by the cross at the letter “M”, and the “Rickmers” at the point indicated by the cross at the letter “R”. The distance according to this chart of the respective locations would be between the “Rickmers” and the “Corona” about three-sixteenths of a mile, and between the “Rickmers” and the “Mildred” about three-sixteenths of a mile with a southerly wind blowing at from fifteen to thirty miles an hour or upwards. Would you say that is a suitable and proper berth for the “Rickmers”?

A. Why, eleven hundred feet ought to be berth enough for a ship. How long was this “Rickmers”?

Q. Two hundred and sixty-seven feet.

A. How much cable did she have all told?

Q. All told, one hundred and thirty-five fathoms.

A. Yes, sir. Eleven hundred feet is far enough.

Record, pp. 442, 443.

These witnesses of the libellant unite in testifying that the “Rickmers” anchorage was not unsuitable or improper. The claimant in the court below certainly introduced no testimony tending to contradict it, and there is no testimony in the record which tends to show any different state of facts. The court below, however, finds

as a fact “that inexcusable error was committed in choosing the place of anchorage,” and on this finding alone declares that the “Rickmers” alone was in fault and decrees damages against her. We submit that the testimony of two skilled navigators, officers of the United States navy, educated and trained in questions of practical seamanship at the expense of the government, in whose hands are placed vessels which cost millions of dollars and the safety of hundreds of lives, is entitled to respectful consideration by the court. These witnesses could have no bias and are above suspicion. They unite in declaring that the seamanship displayed by the officers and crew of the “Rickmers” is not open to criticism, and particularly declare that the anchorage chosen was suitable and proper. We submit that the testimony of Captain John McT. Panton is entitled to weight. The record shows that he has navigated trans-Pacific passenger vessels of the first class for years in these waters and is a trained and educated seaman. He testifies that the facts in the case show no want of seamanship or care on the part of the “Rickmers”, and particularly states that the anchorage chosen was suitable and proper. Finally, the witnesses called by the libellant, experts and others, however much they may criticise the acts of the “Rickmers” in other respects, unite in saying that the anchorage chosen was suitable and proper. So far as the record in this case shows, the learned judge of the court below stands alone in the opinion that “inexcusable error was committed in choosing the place of anchorage,” and, while we bow to his knowledge and learning in the law, we submit respectfully that his opinion on a question of practical seaman-

ship ought not to outweigh the united opinions of all the witnesses in the case.

As to the Ninth Assignment of Error :

The court erred in finding as a matter of law that the "Rickmers" was to blame for the causes leading up to or contributing to the collision.

Whatever presumption of fault is charged properly to the "Rickmers" has been met fully and overcome. The record shows conclusively that the barque lay in safety at her anchorage until the hook in the relieving tackle straightened out, bringing the weight of the ship on to the iron chain with a jerk. It is important that the description and purpose of this relieving tackle should be understood. A heavy iron chain has little or no elasticity, and the purpose of the relieving tackle is to give a certain amount of spring to the ground tackle, so that the cable may take a sudden strain gradually. It is made by weaving a heavy manilla rope about the cable and hooking the bight of the rope into the hook of a tackle which in turn was made fast to the mast. The elasticity of the rope and tackle is a protection against sudden strains and jerks. When the hook gave way the weight of the ship came upon the slack of the iron chain with a jerk, the cable parted and the weight of the ship was thrown entirely upon the starboard ground tackle suddenly and with sufficient force to tear the starboard anchor loose, thus sending the ship adrift. Common sense tells us that no tackle or gear could have stood this.

Testimony of Braue, Record, pp. 65, 66, 78, 79, 80, 81.

Testimony of Schwarting, Record, pp. 47, 48, 49.

Testimony of Schank, Record, p. 97.

Testimony of Kevister, Record, p. 122.

Testimony of Von Freiben, Record, pp. 124, 125.

If the ship is to be charged with negligence because of these facts, the finding must be based on one or more of the following propositions:

- (a) The ship was insufficiently found in ground tackle and appliances.
- (b) A want of good seamanship was shown at the time the ship first came to her anchorage, resulting in the breaking of her port compressor and disabling partially her port ground tackle.
- (c) A want of good seamanship in the means taken, or in failing to take proper means, to repair the damage to the port ground tackle.
- (d) A want of good seamanship in failing to pay out more cable on one or both of her anchors.

It is impossible to conceive of any further proposition or act of the "Rickmers" which would constitute negligence.

The record shows that the libelant made no effort in the court below to prove the "Rickmers" in fault on any of the first three of these propositions, so that the appel-

lant is under the burden of rebutting merely the presumption of some fault arising from the fact that his vessel went adrift; in other words, he has to meet nothing more than the doctrine of *res ipsa loquitur*. This doctrine does not shift the burden of proof, but operates merely to shift the burden of proving, which is vastly a different proposition.

Central Bridge Corporation vs. Butler, 2 Gray
132.

Whatever burden the appellant may be called upon to meet, we submit that he has met it fully. Let us consider the above four possible grounds of liability in their order:

That the ship was fully found in ground tackle is shown by the certificates of Lloyds and of the Bureau Veritas.

Record, pp. 53, 54, 55, 56, 129 (and stipulation relating thereto), 130, 131. See, also Claimant's Exhibit No. 2.

The mate of the "Rickmers" describes the compressor in detail and says that it was in good order and sufficient for the purposes for which it was used:

Q. Are you familiar with compressors on ships of this kind?

A. Yes, sir.

Q. How did this compressor on the "Rickmers" compare with compressors on ships of that size and class?

A. I would say it was all right and strong enough.

Testimony of Braue, Record, p. 64.

Captain Schwarting testified:

Q. Captain, that compressor on your ship; how does that compare with compressors on other ships of similar size and capacity as to strength and durability?

A. I don't understand.

Q. What I am getting at is this: The compressor on your ship was of the kind that is usually used on ships of that size?

A. Yes, sir.

Q. Was it in good order?

A. This was in good order; yes. We are laying to the same anchor chain at Dungeness; with the same anchor.

Q. Was the machinery connected with the running out of the anchor chains in good order, if you know?

A. Yes, sir.

Q. How do you know?

A. We take it off every voyage and about three or four days before coming to port we put it on again.

Q. When was the last examination made of this compressor and the anchor chains before this accident? When was it examined last—looked over?

A. I don't know. It is in the book in the vessel.

They are examined. The last examination on the last voyage from Nagasaki to here. We cleaned it all and put it on three or four days before we got to port.

Q. I don't mean examinations that you have in your book, or anything like that; but what examinations were made on the ship?

A. Three or four days before coming into port we took it off and cleaned it up.

Q. When it was taken off was it in good order?

A. Yes; when we cleaned it and when we put it on it was in good order.

Q. You mean by that the anchor chain windlass and the compressor? Everything was examined, was it not?

A. Yes, sir.

Q. And that was three or four days before you arrived at Salmon bay?

A. No; before we got in to Flattery.

Testimony of Schwarting, Record, pp. 38, 39.

Boehnke, the blacksmith and general machinery man of the ship, testified as follows:

Q. Mr. Boehnke, state whether or not before you arrived here at the Sound you made any examination of the compressor and windlass and chains on this ship, the "Rickmers."

A. Yes; I always do. I take them off and put them away and look at them and put them together again.

Q. Did you put them in position before you arrived here in the Sound?

A. Yes, sir.

Q. How long before?

A. A couple of days.

Q. How did you find them—in what condition?

A. They were all right.

Q. How much did you take the machinery apart, connected with the compressor and the windlass and all that; what did you do with it? Did you take it all apart?

A. Not all; the stoppers and the screws.

Q. You took them apart and looked at them?

A. Yes, sir.

Q. They were all right?

A. Yes, sir.

Testimony of Boehnke, Record, pp. 114, 115.

P. G. Hill, Lloyds' surveyor for Puget Sound ports, testified as follows:

Q. Captain Hill, how did you find the cables of the "Rickmers"—that is, what was left of them—as to being up to Lloyds' requirements?

A. They were Lloyds' test cables, the best make of cable, which have been classed in Lloyds' some time previous.

Q. What would you say as to whether her entire ground tackle, including cables, was sufficient as required for such class of vessels in the seafaring world, if you know?

A. My opinion was that they were in good condition.

Q. Were they up to the standard required on that class of vessel?

A. They were up to the standard required on that class of vessels; yes, sir.

Q. Was that the case also with the compressors?

A. That was the case also with both compressors.

Q. How was the windlass?

A. The windlass was up to the standard previous to the accident.

Testimony of Hill, Record, pp. 272, 273.

Captain Walker, assistant Lloyds' surveyor for Puget Sound ports, testified as follows:

Q. Now, in making these various surveys of the "Robert Rickmers" after that collision, did you make any particular examination of her cables and of her entire ground tackle?

A. We made a very careful examination of the ground tackle that was left.

Q. Including the cables?

A. Yes, sir; the ground tackle, cables and anchors.

Q. Including the cable and compressors?

A. Yes, sir.

Q. That is, all that was left of it?

A. Yes, sir.

Q. What condition did you find them in?

A. The anchors and cables were good.

Q. What would you say as to whether they came up to Lloyds' requirements in size and quality of material?

A. They came up to them; coincided with Lloyds' requirements.

Q. And with the Bureau of Underwriters' rules?

A. I am not acquainted with those rules; but I think that Lloyds' are in excess of them.

Q. In excess?

A. Yes, sir; in regard to dimensions and the excess required on ground tackle.

Q. Are Lloyds' requirements or rules in regard to tensile strength or testing strengths of any kind less than any of these other shipping bureaus or organizations?

A. No, sir; Lloyds' is acknowledged as the highest class throughout the world.

Q. Now, what condition did you find them in?

A. The anchors and cables, the remaining anchors and cables were in first-class condition.

Q. In what condition did you find the compressors?

A. The starboard compressor was all right, and the port compressor was slit in two and broken.

Q. To what extent, if any, did you examine the port compressor to determine the cause of the break?

A. We made a careful examination of the port compressor to determine whether it could be repaired or not, and also what was the cause of its breaking or damage, and whether it would be necessary to renew it.

Q. Were you able to determine the cause?

A. Yes, sir.

- Q. Could you discover the cause from any outward or inward appearance of the compressor or compressor block?
- A. The compressor and the compressor block had been forced apart by the cable being drawn through the same.
- Q. Just explain that, if you think you know, whether from an investigation that you made or from an examination of those broken parts, what the cause was? Just tell us in your own way.
- A. From the examination made at the time I could see that the cable which fits into the compressor—the compressor is a cast-iron block with a raising and lowering tongue, and this sets on a wooden block with holding bolts going right through the deck and beams—the cable had been lying in this compressor, which exactly fits the links, and if any undue or excessive strain comes on it, it would haul the cable forward and spread the block apart, and this was the way the block was split; the cable was hauled forward—the vessel coming back hauled the cable forward and forced the block apart.
- Q. Would any ordinary strain upon the anchor or any usual ordinary strain on ships at anchor have that effect?
- A. No, sir; certainly not; as the compressor is made to hold the vessel. The idea of the compressor is, after the vessel is once moored, to take the strain off the windlass after it has lowered the anchor, and then it is thrown on

the compressor, which is made in such a way that the cable cannot slip through it.

Q. If no ordinary strain could have that effect, how do you account for it?

A. It was an extraordinary strain, due to the elements, an excessive gale of wind at the time, and the anchor holding fast.

Q. Have you any idea as to the force or velocity of the wind which would produce such an effect as that?

A. Why, I don't know what the force or velocity of the wind was at that time.

Q. Do you think anything less than a maximum storm or hurricane could produce the effect you saw?

A. It would require a very severe gale to do such a thing, or a very swift tide.

Q. To what extent are you familiar with vessels of a similar class to the "Rickmers" and with their compressors, their ground tackle and equipment?

A. To what extent am I familiar with them?

Q. Yes, sir.

A. My whole business has been with them practically all my life.

Q. Well, now, how did this ground tackle on the "Rickmers," and particularly her compressors and particularly her compressor block—everything—compare with similar tackle on similar ships?

A. Very favorably.

Q. Do you know of any way that the compressor and compressor block could have been made any safer? Could it have been constructed in any safer manner?

A. No; it was constructed on normal lines. The design is as good as can be made, and all vessels are practically constructed on the same lines as far as the compressor is concerned. That is the type of compressor adopted by various shipbuilders throughout the world.

Testimony of Walker, Record, pp. 288, 289, 290, 291, 292.

We submit that the testimony is full, complete and conclusive that the “Rickmers” was fully found in the very best class of ground tackle and appliances, and that the record contains no evidence which tends to show the contrary. Whatever presumption may be laid upon us in this particular we have met fully and completely.

As to the second possible ground of liability, viz.: A want of good seamanship at the time the ship first came to her anchorage, resulting in the breaking of her port compressor and disabling partially her port ground tackle, we have submitted the case to the ablest practical navigators whom we could find, to two officers of the United States navy, and to a commanding officer of one of the largest and best navigated passenger steamships, who has been taking his vessel in and out of Puget Sound for years. These men have had in their charge vessels of the highest value and upon their nautical skill and judgment has rested the safety of hundreds of lives. They are above sus-

picion of prejudice or bias, and we earnestly submit that their opinion is entitled to all the weight which English courts of admiralty give to the Elder Brethren of Trinity House. These witnesses, Lieutenants Lopez and Symington of the navy, and Captain Panton of the "Victoria" and the "Arizona," unite in saying that no want of judgment or of good seamanship was shown in this respect, and we refer the court particularly to their testimony in which, in answer to hypothetical questions carefully framed to include all of the material elements of the case, they sustain and endorse the course pursued by the "Rickmers" in every respect. See

Testimony of Symington, Record, pp. 301-311.

Testimony of Lopez, Record, pp. 314-323.

Testimony of Panton, Record, pp. 373-384.

So far as this possible ground of liability is concerned, the libelant put in no testimony to show any want of good seamanship on the part of the "Rickmers." The testimony of all the witnesses sustains the conclusion that everything was done which should have been done, and that nothing was done which ought not to have been done.

What has been said in discussing the second possible ground of liability is true of the third possible ground, viz.: A want of good seamanship in the means taken, or in failing to take proper means, to repair the damage to the port ground tackle. The reliable and competent witnesses who endorsed and approved of the seamanship of the "Rickmers" in other respects, were equally clear and em-

phatic in their endorsement and approval in this respect. It is true that the libelant made some attempt to criticise because the master of the "Rickmers" did not "sight" his port anchor after the breaking of the port compressor, but his criticism did not appear to be of weight to the expert navigators who testified, and to the non-nautical mind it is difficult to see upon what the criticism was based. The damage to the port ground tackle was the breaking of the compressor, something which could not have happened if the port anchor had not taken hold of the ground. The "Rickmers" was hauled back to her anchorage by hauling on her port chain and anchor, with the assistance of the tug, so that the fact is clear that the port anchor and chain were holding fast at this time. Having dropped his starboard anchor, why should the master of the "Rickmers" disturb his port tackle? Having rigged a relieving tackle thereon, it surely would have been unwise to put a further strain upon his weakened tackle, and it was eminently wise to rely on his starboard tackle, together with such assistance as the port tackle, repaired as fully as possible with the means at hand, to hold his ship safely at her temporary anchorage until the tug should take her to her destination. Those who criticise his navigation in this and other respects were masters of small coasting schooners, cronies and intimates of the master of the "Stimson," banded together in a common desire to "soak the Dutchman," a spirit which has brought the ports of Puget Sound into disrepute in foreign shipping circles and which operates to the detriment of the commerce of these ports.

Upon the fourth possible ground of liability, viz.: A want of good seamanship in failing to pay out more cable

on one or both of her anchors, the libelant has submitted enough testimony so that it may be said in fairness the record contains sufficient testimony to present a question for the court to decide. We are confident, however, that a careful consideration will decide this question in favor of the appellant. It will be remembered that the "Rickmers" was in ballast, light and high out of the water, showing more freeboard and exposing a greater surface to the wind. The wind itself was not true, but blew in gusts of hurricane force at times, with intervening times of comparative calm, not always from one direction, but veering from southeast to southwest. It does not need an expert to know that under such circumstances too much scope of cable would be worse than too little, since the vessel must pitch and toss and wrench and wrack herself and her ground tackle more with a long than with a short scope. As long as her scope was sufficient to hold her, that scope was sufficient. The testimony of the appellant's experts is that her scope was sufficient, and the testimony of her officers and crew is that the vessel did not drag, but held her position until the hook gave way on her port relieving tackle, when her port chain cable snapped as one snaps a string by allowing it to hang loose and tautening it with a sudden jerk. This threw the weight of the ship suddenly upon the starboard tackle, which stood the strain without breaking, showing again that there could be no general defect or decay of her ground tackle, such as would result from age, excessive wear, or the like; but the starboard anchor was dragged from its holding ground and set the ship adrift. These things happened in rapid succession while the storm was at its height, blowing with hurricane force over the waters

of the bay. We refer the court again to the testimony of Messrs. Lopez, Symington and Panton as to whether or not, from a sailor's point of view, the "Rickmers" was guilty of any want of good seamanship. Where the testimony is conflicting, the court is bound to consider the capacity, skill, responsibility and impartiality of the witnesses, especially upon matters of opinion. We trust this question to the court in confidence that the weight of testimony upon this question is greatly in the appellant's favor, and this hearing being in effect and under the admiralty practice a trial *de novo*, the view of the learned judge below is not entitled to the weight conceded to trial courts on the facts, particularly when a case such as this was not heard in the presence of the court below, who had no more opportunity than this court to see or hear the witnesses.

A resume of all the facts in this case shows that the damages for which this cause is brought were the result of the force and fury of the elements and of inevitable accident. The court below held the "Rickmers" to a degree of care, caution and foresight which is not warranted in law, and refused to consider the accident inevitable because the "Rickmers" failed to take steps which would have prevented the accident, but, so far as we have been able to discern, the court did not point out any specific detail in which the "Rickmers" erred, except that "inexcusable error was committed in choosing the place of anchoring," a finding which is not supported by the testimony and is not in harmony with the opinion of every competent mariner who testified in the cause.

To maintain the defense of inevitable accident, the

party charged need show only that he exercised ordinary care, caution and nautical skill.

The Mabey and Cooper, 14 Wall 215.

The Supreme Court in thus defining inevitable accident followed its earlier decisions in the "*Morning Light*," 2 Wall 550, and the "*Grace Girdler*," 7 Wall. 196. This rule has not been changed by subsequent decisions, and, founded as it is in reason and justice, requires no change. It has been applied in many subsequent cases. In *Arbo vs. Brown*, 9 Fed. 318, a dismantled river steamboat was moored safely, according to the weight of the evidence, but broke loose in a storm and drifted into libellant's vessel. The Circuit Court held it to be a case of inevitable accident. In the "*Florence P. Hall*," 14 Fed. 408, a vessel running free with the wind dead aft came into collision with a smaller craft close hauled, the weight of the evidence being that the night was foggy. Held, to be a case of inevitable accident. In the "*Olympia*," 52 Fed. 985, a steamboat going up the Detroit river at full speed was starboarded to avoid a steamboat having two schooners in tow. Her tiller (wire) rope parted and she came into collision with one of the schooners. The evidence showed the rope to be of suitable size and that it had been inspected by the mate and a hand who repaired it shortly before the collision. The District Court held it to be a case of inevitable accident and this decision was sustained on appeal: 61 Fed. 120. In the "*Mary L. Cushing*," 60 Fed. 110, a ship moored to a wharf in the customary way broke loose during a heavy gale which shifted to the quarter which bore most heavily upon the ship. For a resulting collision she

was held blameless, the accident being inevitable. In the case of the "*Austria*," 14 Fed. 298, the District Court for the District of California, following the Supreme Court in the "*Grace Girdler*," defines inevitable accident as where a vessel is pursuing a lawful avocation in a lawful manner, using proper precautions against danger, and an accident occurs; it is enough that the caution exercised should be reasonable under the circumstances, such as is usual in similar cases. The highest degree of caution is not required. In the "*Austria*" the ship was moored in the usual way at an Oakland wharf, the weight of the evidence being that the mooring was proper and sufficient under ordinary circumstances. She tore loose from her moorings in a storm, making it necessary for libellant's vessel to shift her position, resulting in injury. Held to be a case of inevitable accident.

In every case where the rule has been invoked and not followed some manifest want of care appears clearly. In the "*Columbia*," 48 Fed. 325, a large steam elevator attempted to cross the North river when the wind was blowing at a rate which her pilot admitted made it unsafe for her to attempt a mooring while to windward. In making such attempt she came into collision, although there was only a fresh breeze blowing. The court refused to consider it a case of inevitable accident. In the case of the "*Bowden*," 78 Fed. 649, the collision occurred in ordinary weather between a steamship under way and under control and a steamship which had no steam of her own, but was being shifted by a tug to another berth. The court refused to consider this a case of inevitable accident. In

the case of the "*Severn*," 113 Fed. 578, the vessel was lying at one anchor and had made no preparation to drop her second anchor in case of necessity. In a severe thunder shower she dragged her one anchor and came into collision. Her defense of inevitable accident was held not to have been sustained, following a long line of cases in which it has been held that a vessel at anchor is bound to have both anchors ready for use in an emergency. In the case of the "*Mary S. Brees*," 120 Fed. 45, a river steamboat under complete control came into collision with a vessel moored to the river bank because the pilot attempted a maneuver unseasonably. It was held not to be a case of inevitable accident. In the "*Rebecca*," 122 Fed. 619, two schooners were beating to windward in a narrow river in the daytime, in clear weather. The overtaking vessel came into collision with the other at the end of a tack. Held not to be a case of inevitable accident.

In the case of the "*Olympia*" (*supra*), the Circuit Court of Appeals for the Sixth Circuit discussed the liability of a ship for a collision due to the breaking of some of her appliances, and held that, as to strangers, the owners of vessels are not under any liability as warrantors of the sufficiency and soundness of machinery or equipment. They are bound to use that degree of care in the selection of machinery and equipments which persons of ordinary prudence are accustomed to use and employ for the same purpose. Under this rule the "*Rickmers*" cannot be held to any liability because of the breaking of her compressor, and if the breaking was the cause of the vessel's drifting, no other act of negligence having intervened, the "*Rick-*

mers" must be held without fault, and the accident to have been caused by one of the perils incident to "those who go down to the sea in ships."

The English courts of admiralty have followed the same line of decision as the courts of the United States. In the case of the "*William Lindsay*," a British ship of 970 tons was lying at a buoy in the harbor of Valparaiso about three-quarters of a mile to windward of the barque "*Estrella*." The buoy was not one of the buoys belonging to the port authorities and was not intended or adapted for use as a mooring buoy and was not on the usual mooring ground. A gale came on to blow; the "*Lindsay*" did not let go any anchor, but remained at the buoy as before the gale. The next day she broke from the buoy, the shackle-band of the buoy having given way, and her crew let go her port anchor in great haste, but the cable jammed in the windlass and the ship drifted into collision with the "*Estrella*," doing great damage. The court below held it to be a case of inevitable accident, and this finding was affirmed on appeal.

The "William Lindsay," 2 Asp. Mar. Law Cases
118.

s. c., L. R. 5, P. C. 338.

The decision in the "*William Lindsay*" was followed and approved in the "*Virgo*," 3 Asp. Mar. Law Cases 285, s. c. 35 L. T., N. S. 519, s. c. 25 W. R. 397, a case very similar to that of the "*Olympia*," 52 Fed. 985, s. c. affirmed on appeal, 61 Fed. 120, and decided the same way on appeal, reversing a decision of the court below. Both of

these cases have been cited with approval by the Supreme Court of the United States. See

The "Caledonia," 157 U. S. 145.

The "Carib Prince," 170 U. S. 663.

We submit that the case presented against the "William Lindsay" was much stronger than the case presented against the appellant here. If the doctrine of inevitable accident was held to apply in that case, the court cannot ignore it in the case at bar without disregard to established principles of maritime law and without placing upon shipowners a liability, as to anchoring and securing their vessels from stress of weather, almost co-extensive with that of an insurer.

As to the First, Second, Third, Fourth and Tenth Assignments of Error:

First: The court erred in finding as a fact that at and before the time of the collision a vigilant watch was kept on and by the schooner "Stimson."

Second: The court erred in finding as a matter of law that the schooner "Stimson" was under no obligation to abandon or shift her anchorage to avoid imminent danger of collision and to minimize the damage resulting therefrom.

Third: The court erred in finding as a fact that the schooner "Stimson," under the conditions of wind, weather and anchorage existing at and before the time of collision, could not have been maneuvered so as to avoid the collision or to have minimized the damage resulting therefrom.

Fourth: The court erred in finding as a matter of fact and of law that the schooner "Stimson" was free from blame as to matters causing or contributing to the collision.

Tenth: The court erred in failing to find as a matter of law that the "Stimson" was to blame because of her failure to take seasonable steps to avoid or minimize the results of the collision.

These matters are so interrelated that they may be best discussed together.

Was the conduct of the "Stimson" above criticism under all the facts? We submit that more substantial ground exists for a finding of fault against the "Stimson" than against the "Rickmers." She was lying at one anchor and 105 fathoms of cable nearly three-quarters of a mile to leeward of the "Rickmers." There is no evidence that her other anchor was ready for instant use, as prudent seamanship requires; indeed, there is strong presumptive evidence that it was not ready, but was encumbered by her deck cargo (see testimony of Capt. Peterson, Record, pp. 559, 560), since no use was made of it while the two vessels were locked together and dragging together toward a lee shore. She was supposed to have a watchman on duty, but this watchman did not know of the trouble to windward when the "Rickmers" broke from her anchorage and came into collision with the "Mildred." At the very least, a full half-hour elapsed from the time the collision with the "Mildred" occurred to the time of the collision with the "Stimson," and yet it appears from the evidence that no one on board the "Stim-

son" had any intimation of trouble until just before the collision occurred. (See testimony of Sennin, mate of the "Stimson," Record, pp. 185, 186; testimony of Peterson, captain of the "Stimson," Record, p. 555.) The weather was clear and all the vessels were equipped with riding lights, and West Point light was a fixed point in the offing from which any competent sailor could have told whether or not vessels to windward were lying securely or had dragged from their anchorage. The "Rickmers" came into collision with the "Mildred" and carried away her foretop hamper and jibboom with a crash and noise which aroused Captain Anderson of the "Corona," who testifies that he came on deck and could see all that occurred subsequently. (See testimony of Anderson, Record, p. 145.) It is inconceivable that a vigilant and competent watchman on the "Stimson," who was attending to his duties, should not have seen and known of these things and the consequent danger to his ship, yet the testimony is that he did not see or know, and did not call his commanding officer until the "Rickmers" was on top of the "Stimson." If this watchman had been attending to his duties, the officers and crew of the "Stimson" (for there were two officers, five sailors and a cook on board; see testimony of Peterson, Record, p. 543) could have taken steps to avoid or minimize the effect of the collision. The seamanship of the court below is again open to criticism in finding that the "Stimson" could not be maneuvered because she was at anchor. What happened in the afternoon, when the seamanship of the master of the "Corona" avoided a collision, shows what could have been done by the "Stimson" in the evening. Even a landsman, if ever

he has got the smell of salt water in his nostrils, knows that a vessel's head, particularly if she is schooner-rigged, can be canted to one side or the other by hauling a head-sail over to windward. Indeed, it is a common occurrence in getting under way to throw the vessel on one tack or the other by hauling over a forestaysail or jib. Every nautical man who testified says the maneuver was possible, and the only criticism is that it would have to be well timed or the vessel would swing back after having run up to her anchor on one tack. But this danger could have been avoided if the "Stimson" had had her other anchor and ground tackle ready for use; for this anchor could have been dropped to hold her in position until the "Rickmers" had passed to leeward. If necessary, the "Stimson" could have slipped her cable without great danger to herself, certainly without greater danger than she suffered by remaining supinely in the path of the "Rickmers." With a large vessel to windward dragging her anchors, the position of the "Stimson" was precarious at the best, and warranted any maneuver which promised relief. The "Rickmers" was entitled to this degree of watchfulness and care, skill and caution from the "Stimson," and the Supreme Court has held a vessel in fault for not showing it. In the case of the "Sapphire" the Supreme Court reversed a decision of the Circuit and of the District Courts below on this ground alone. The case was very similar to the case at bar in more than one respect. The French transport "Euryale" came to anchor in San Francisco harbor about 600 yards from a wharf, and put out one anchor. The American ship "Sapphire" came to anchor about 300 yards southeast of

the “Euryale” at a point farther up the harbor and farther from the wharf. A gale came up at night and the collision occurred at five o’clock in the morning, the “Sapphire” having dragged down upon the “Euryale.” The “Sapphire” was alleged to be in fault for having anchored too near the “Euryale,” but this charge was not sustained, the court finding that the distance was sufficient so that the one vessel did not give the other a foul berth. The “Sapphire” was found in fault, however, for not letting go another anchor. Both courts below found the “Euryale” free from fault; but the Supreme Court reversed this finding on facts very similar to those of the case at bar. We quote from the opinion:

“But we are not satisfied the ‘Euryale’ was not free from fault. The captain was not on board. The first officer, though on board, was not on deck from eleven o’clock until after the collision. Le Noir, the third officer, was officer of the deck that night. He was called up by the head, or chief, of the watch at three o’clock to observe that the ‘Sapphire’ was approaching nearer to them than she had been. He attributed it to her letting out more chain, and returned below, and did not come on deck again until five o’clock, a few moments before the collision, when it was too late to avoid it. The instant he came on deck he ordered done the thing that could have saved them had it been done earlier—the jib to be hoisted. It would have sheered the vessel off and allowed the ‘Sapphire’ to pass her. Such is the testimony of libelant’s own witnesses. It is the judgment of the first officer of the ship. Why was not this done before? Why was not the officer, on such a night, in such a gale, at his post? At

four o'clock the man in charge of the watch saw the 'Sapphire' approaching and says he made a report to that effect. The first officer says no report was made to him. But the third officer, who was officer of the deck, does not say that it was not made to him. If the fact was not communicated to the proper officer, that was in itself a fault. If it was communicated and not attended to, the case of the libelant is not bettered. But the evidence is very strong that the officer received the information. Deveaux, the head of the watch, says that he reported the fact at four o'clock; and Bioux, who had charge of the watch between four and five o'clock, says that between these hours he saw the 'Sapphire' with the wind astern, and heading the current, coming toward the 'Euryale'; that she continued to approach gradually, and that he reported this to Mr. Le Noir between four and five o'clock. Here, then, was a clear neglect of proper precautions for an entire hour immediately preceding the collision.

“We cannot avoid the conviction that there was a want of proper care and vigilance on the part of the officers of the 'Euryale' and that this contributed to produce the collision which ensued; both parties being in fault, the damages ought to be divided equally between them.

“Decree of the Circuit Court reversed and the cause remitted to that court with directions to enter a decree.”

“*The Sapphire*,” 11 Wall 164 at pp. 170, 171.

It will be noted that the failure to notify an officer of the fact that a vessel to windward is dragging is itself de-

clared to be a fault; and there is no conflict in the testimony in the case at bar that the officer in command of the “Stimson” was not notified until a moment before the collision occurred, thus depriving the “Rickmers” of the benefit of that officer’s skill and judgment in averting the accident. The “Sapphire” has been declared to be a leading case, correctly stating the rules which should govern in cases of this kind (see the “*North Star*,” 106 U. S. 22), and its doctrine has been followed and cited consistently. (See 7 Rose’s notes and cases there cited.)

The pleadings in the case at bar show that the claimant in the court below did not file a cross-libel, but alleged and proved his damages under the allegations of his answer. We contend that he may recover his damages *in personam* from the libelants. It is not necessary that a cross-libel be filed; it is sufficient if the answer disclose allegations of damage and proof is offered to support them.

The “Sapphire,” 18 Wall 51.

It was so held in the “*Pennsylvania*,” 12 Blatchf. 67, s. c. Fed. Cases No. 10,951, where a division of damages was decreed by the Supreme Court on appeal, reversing a decree for the libelant. The claimant, not having alleged his damages in his answer, was allowed to amend on presentation of the mandate of the Supreme Court to the court below. The same rule was followed in the “*Reuben Dowd*,” 3 Fed. 528, and in *Gillingham vs. The Towboat Co.*, 40 Fed. 649. In the “*North Star*,” 106 U. S. 27, the Supreme Court, although the question was not germane to the issue there decided, took occasion to repeat and en-

dorse the position taken in the “Sapphire.” We submit that no good reason exists why a respondent in a cause of collision should not allege his damages and recover therefor under an answer, provided he is content to waive his rights *in rem* and to take a decree *in personam*.

As to the Merits of the Cross=Appeal:

The libelant below, his mouth watering for his full pound of flesh, asks the court not only to sustain the decree of the court below, but also to give him additional damages for fourteen days’ demurrage. The court below, upon insufficient evidence, found for 74 days’ demurrage at the rate of \$58.00 a day, basing the time upon the fact that, although the vessel was delayed 90 days, she was in the same relative condition in readiness for sea in 74 days that she was at the time of the collision. Certainly the cross-appellant has been treated generously in the matter of his incidental damages. We have paid his butcher and baker and candle-stick maker for all the expenses of his vessel during the time of detention. We must pay his doctor’s bills, his little charges for filing meat saws, his new stovepipe for his galley, and every other conceivable charge. To have charged us for the additional demurrage which the cross-appellant claims would be carrying the punitive theory of damages still farther beyond its limit. If we are to be held for demurrage, we submit that the finding of the court below was right as to the time for which it should be computed.

The award is grossly excessive upon its face, being almost, if not quite, equivalent to half the value of the

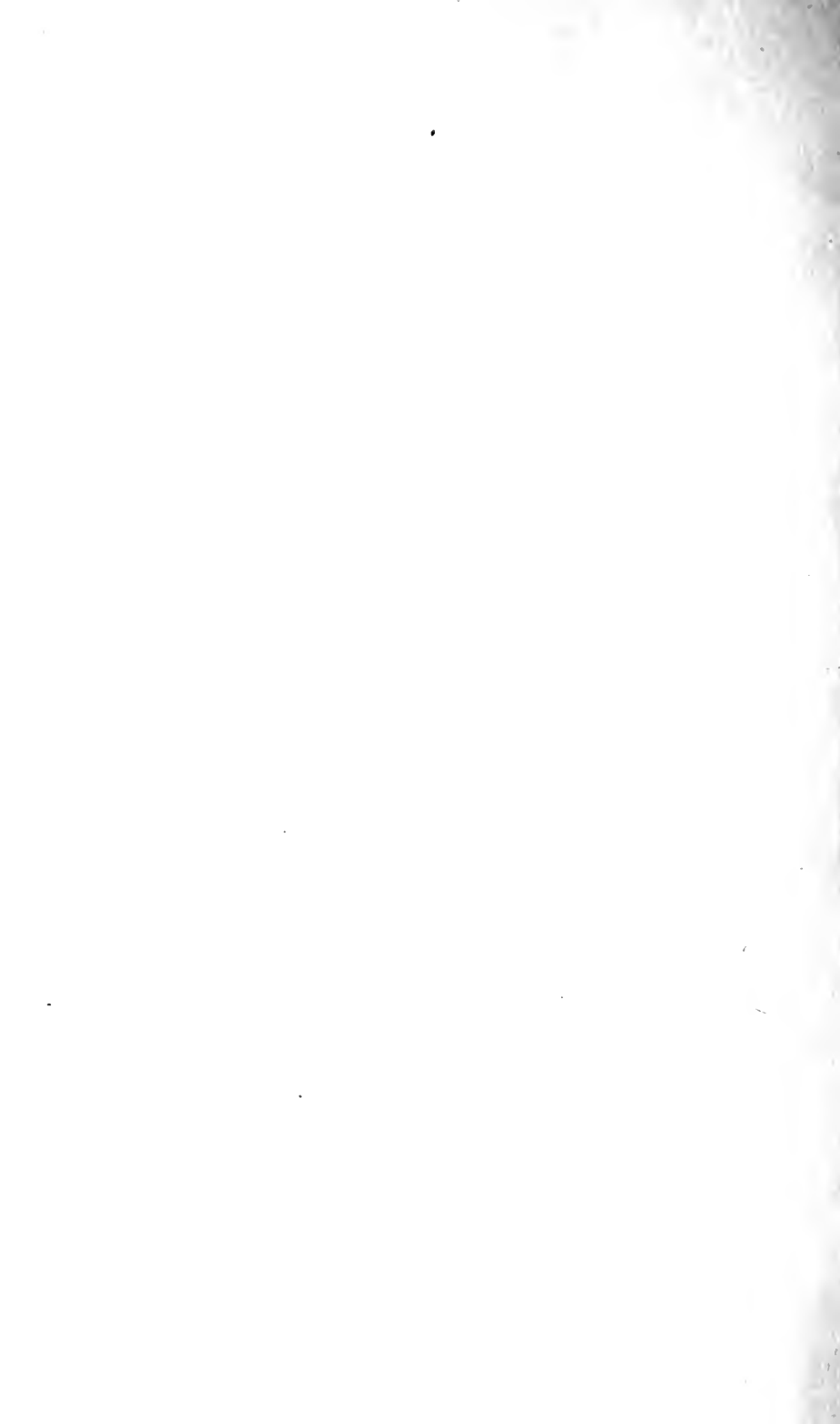
average schooner in these waters, new or old. In addition thereto the “Rickmers” is by the decision forced to bear all of her own damage and loss, which have been very large.

The appellant in conscience and also in law is unquestionably entitled to relief.

JAMES M. ASHTON,
FRANK H. KELLEY,

Proctors for Appellant.

Additional Authority
Steinbock v Rae
14 How 532.



IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

C. SCHWARTING, Master and Claimant of
the German Barque "ROBERT RICK-
MERS," her tackle, apparel and furniture,

Appellant.

vs.

THE STIMSON MILL COMPANY, a corpora-
tion,

Appellee.

No. 1149

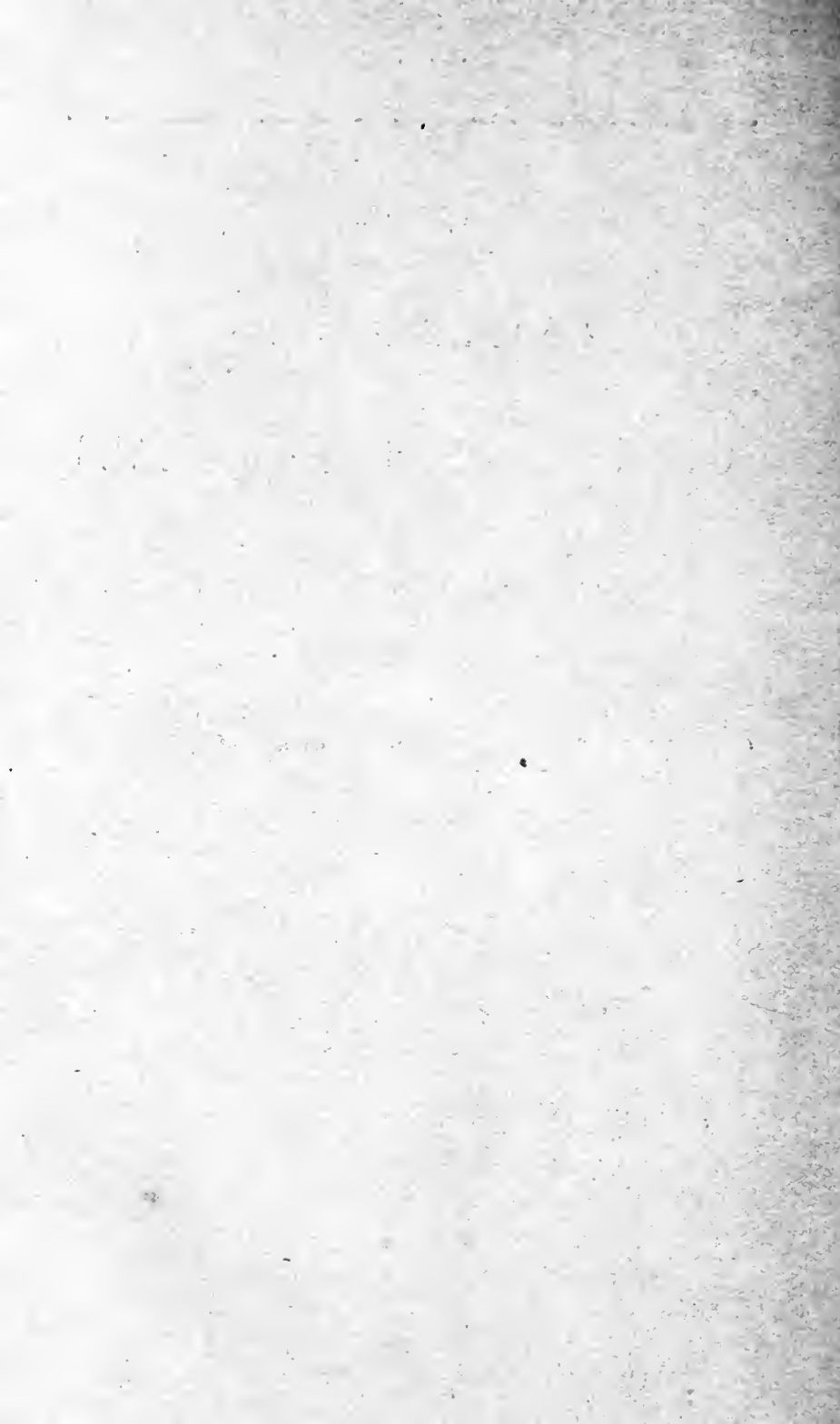
FILE

FEB -8

BRIEF OF APPELLEE

HUGHES, McMICKEN, DOVELL & RAMSEY,

Attorneys for Appellee.



IN THE
UNITED STATES
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C. SCHWARTING, Master and Claimant of the
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tion, *Appellee.*

No.-----

BRIEF OF APPELLEE

STATEMENT OF THE CASE.

The facts out of which this controversy grows, as shown by the record of the case, may be briefly stated as follows:

On the afternoon of December 25th, the tug "Tacoma," having in tow the German barque "Robert Rickmers," was proceeding from Port Townsend to the part of Tacoma. The "Rickmers" is a barque of 2277 tons, gross tonnage,

and was in ballast. The weather was stormy and squally, and heavy head winds were encountered. On account of the condition of the wind and weather, night approaching, in the judgment of the master of the tug, it became unsafe to attempt to continue the voyage to Tacoma. He accordingly sought an anchorage in Shilshole Bay, where, at the time, there lay at anchor the schooners "Mildred," "Corona" and "Stimson." The "Mildred" and the "Corona" were each of about 400 tons burden, and were anchored about a quarter of a mile apart. The "Stimson," a schooner of 700 tons burden, was anchored about a half mile further off shore. She had already taken on about two-thirds of her cargo, and was at the time riding upon her port anchor, with about 105 fathoms of chain. The "Rickmers" was taken by her tug to a berth about midway between the "Mildred" and the "Corona," and further in shore. She cast off her towing hawser and dropped her port anchor, running out about 45 fathoms of chain. The compressor was made fast upon the chain, but when the bark, drifting with the force of the wind then blowing, took up the slack of her chain, the sudden strain caused the compressor to break. The windlass at first was unable to hold the chain, and ten or fifteen fathoms of additional chain ran out. The momentum of the barque was then so great that she continued to drift, dragging her anchor, until she had come down to the "Corona," almost coming into collision with the latter schooner. She was then overtaken by the tug, which again made fast to her and towed her back to a second anchorage, near the position of her first anchorage, but a little further in shore. When the tug made fast to her, the crew of the barque hauled in about fifteen fathoms of her port chain and then made it fast, thenceforth having but forty fathoms of chain out on her port anchor. The port anchor was not sighted to see whether it had fouled, or become broken or impaired by

the strain which had carried away the compressor. She was towed back to her second anchorage, a distance of about 1100 or 1200 feet, her port anchor dragging upon the bottom. In coming to anchor a second time her starboard anchor was dropped with thirty fathoms of chain. After dropping the starboard anchor, the port anchor was not hoisted to see whether it had become fouled or injured in dragging upon the bottom back to the second anchorage. An examination of the positions, as shown upon the chart, will disclose that the port anchor must have been trailing aft over the port bow. The direction from the "Corona" to the anchorage of the "Rickmers" was southwesterly. The winds and squalls varied from southeast to southwest. At the time the "Rickmers" was coming to anchor they must have been blowing from the southwest in order to carry her toward the "Corona." The physical facts disclose that after the "Rickmers" came to anchor the second time she was necessarily riding entirely upon her starboard anchor.

There is no material conflict in the testimony in respect to the relative positions of the four ships at anchor in this bay. Their positions were located approximately upon one of the Government charts introduced in evidence. The witnesses have variously estimated the distance between the several ships, but they substantially agree in locating their relative positions as shown on this chart. The "Rickmers" was about equally distant from the "Mildred" and the "Corona," and this distance was between 1100 and 1200 feet. She came to anchor between four and five o'clock P. M., and she was left by the tug after the second anchorage at about five o'clock. According to the testimony of Mr. Salisbury, the officer in charge of the United States weather bureau at Seattle, the wind at this time had a velocity of sixteen miles per hour from the

southeast. The highest velocity, between four and five o'clock P. M., was eighteen miles per hour. In describing the direction of the wind during this hour, he said:

"It was from southeast to south, a part of the time from the south—about one-half of the time from the south and about one-half of the time from the southeast; a few switches to the southwest for a minute at a time."

(Printed record, p. 527.)

Thereafter the velocity of the wind diminished until seven P. M., when it was fourteen miles per hour. At eight o'clock the velocity was twenty miles per hour. The wind blew mostly from the southeast, but varied occasionally to south and southwest. At 10:35 the wind had attained a velocity of twenty-two miles per hour from the southeast, and during the five minutes preceding eleven o'clock P. M. it increased to twenty-four miles per hour. During the next twenty-five minutes the wind gradually diminished to twenty miles an hour, and then, in the language of Mr. Salisbury, "increased again to twenty-four between 11:25 and 11:35, twenty-four miles; that was from the south to the southwest; between 11:25 and 11:30 the wind was mostly from the southwest, and from there until midnight it was mostly from the southwest, increasing to a maximum velocity of thirty-three miles an hour between 11:32 and 11:40—with a maximum velocity of thirty-three miles per hour, with an extreme of thirty-five miles an hour for one minute.

Q. At what time was the extreme of thirty-five miles per hour reached?

A. The time of the extreme thirty-five miles per hour for one minute was 11:38 to 11:39."

(Printed Record, p. 531.)

After the port compressor had broken, a relieving tackle was used to take the strain off the windlass. This relieving tackle was made fast at one end to the mast, and at the other to the anchor chain, by means of an iron hook about an inch and a half in diameter. About eleven o'clock P. M. it was discovered on board the "Rickmers" that this hook had broken, and that the barque was dragging. She bore down toward the "Mildred," lying northwesterly from her, and carried away the "Mildred's" jibboom. After clearing her, she continued to drift. The weather was partly cloudy and the wind and rain came in squalls, varying from southeast to southwest. As appears more clearly by reference to the chart showing the location of the different ships, the "Stimson" lay in a direction northeasterly from the "Mildred." After clearing the "Mildred" the "Rickmers" continued adrift, dragging her anchor for about a half hour, when she came into collision with the "Stimson." The only reliable testimony by which we may fix the precise time of the collision is that of Richard Sennin, mate of the "Stimson," who says that he was called by the watchman at 11:40 and came on deck immediately, just in time to witness the collision. (Printed Record, p. 185.) As shown by the testimony of Mr. Salisbury, during the preceding five minutes the wind was blowing a gale of from thirty-three to thirty-five miles an hour from the southwest, which accounted for the unusual and erratic course of the "Rickmers." The masts and rigging of the "Rickmers" locked with the "Stimson" in a fast embrace. The port anchor of the "Rickmers" had carried away, but when cannot be determined from the testimony. After escaping from the "Mildred" her crew were engaged in an endeavor to again make fast the relieving tackle upon the port anchor chain, without discovering that the anchor was gone, and also paid out more chain on the starboard anchor; but the momentum of the

ship before the wind was then so great that she continued to drag. After colliding with the "Stimson" the latter's anchor was not sufficient to hold against the added weight and momentum of the "Rickmers," and the two vessels, locked together, dragged northerly along shore, a distance of seven or eight miles, until the wind abated and the vessels were separated, when their anchors held them. This proceeding was instituted to recover for the damages thus sustained by the "Stimson."

BRIEF AND ARGUMENT.

I.

The principal error relied on by appellant arises upon the allowance by the Court of the sum of \$5,000 for permanent damages to the "Stimson" in excess of the cost of repairs. This claim was urged by libellant in the court below, upon the ground that the cost of the repairs placed upon the ship did not measure all of the actual damages sustained by her in consequence of the collision. As has been shown, the masts and rigging of the "Rickmers" became locked in the masts and rigging of the "Stimson" so firmly that for several hours the two vessels were driven before the gale, each dragging its anchor. The force of the collision was necessarily a violent one. The "Stimson" had already taken on board a cargo of 650,000 feet of lumber. The jib-boom and masts and rigging were either broken or damaged so as to become useless. The keelson was split for a length of sixty feet. The vessel was wrenched and twisted until the oakum had started out of her sides. She was a new vessel. To have repaired her so that her condition would have been as good as before the collision would have involved a disproportionate expense and delay. Such repairs only were made as were deemed

practicable and prudent and would render her fit for service; and recovery was sought for the remainder of the damages as permanent injuries. This was not only the most practicable course; but the one involving the least loss to appellant, because it would lessen both the claim for damages to the ship and for demurrage for her detention.

In support of their assignment of error upon this question, proctors for appellant cite and rely upon certain decisions denying a recovery for damages in excess of the cost for repairs. In all these cases the decisions are upon the ground that the proofs render the claim speculative and uncertain.

In the case of *Petty v. Merrill*, 9th Blatchf. 447, cited in appellant's brief, the facts quoted in the opinion of the Court entirely justify the conclusion it reached. With the application of the governing principles of law to the facts of that case, we make no controversy. The rule for which we contend, however, is recognized by Judge Woodruff in that case. He says:

"There may be proof of injury which, though known, cannot be repaired without unreasonable cost, where the party in fault will be benefited by an allowance for actual depreciation, because an attempt to make complete repairs would involve an expense greatly disproportionate to the amount of such depreciation."

What is said above is likewise true of the case of *The Excelsior*, 17 Fed. 924. The denial of permanent depreciation was based upon the ground that the Court was satisfied that after all the repairs made on her, she was in as good condition as before the injury. The same comments may be made upon the case of *Sawyer vs. Oakman*, 7 Blatchf. 290. The opinion of the Court rests upon the fact that "The commissioner reports that the schooner,

by the repairs put upon her, was restored so as to be as strong as she was before the accident, and that she was thereby rendered as favorable to her owners for their own use and employment as she was before." Under these circumstances, the question whether she would sell for as much, was purely speculative and problematical. The Court does not deny the rule that recovery may be had for permanent injuries over and above the cost of repairs, but simply denies the application of the rule to the facts of that case. On the contrary, the rule itself is recognized by the Court when it says:

"I have, in one case of collision, made an allowance for depreciation over and above the loss of use of the vessel and the necessary expenses of repairing, etc. But such allowance should only be made upon proof that is clear, and that furnishes a safe guide in determining the amount."

The statement in appellant's brief that *Sawyer vs. Oakman* is cited as an authority by the United States Supreme Court, is misleading. In the case of *Smith vs. Burnett*, 173 U. S. 433, referred to, the citation is upon a wholly different point.

The quotation in appellant's brief from *The Favorita*, 8 Blatchf. 539, is both misleading and incorrect. That case recognizes the rule for which appellee contends. What the Court really said upon the subject in that case is as follows:

"The owner of the injured vessel may recover the cost of repairing her. If the cost of such repairs can be clearly and reliably shown, he may have such recovery, whether the repairs have been actually made or not. He may repair his vessel fully so that she shall be actually as good as she was before the injury, and be indemnified by his recovery. If his vessel be wholly lost, or so injured that she cannot be repaired except at a cost greater than her

value, he may recover her value; and there may, possibly, be a case in which complete repairs cannot be made, in which intrinsic and inevitable diminution of value could be estimated and safely allowed. But that alleged depreciation in the market, which is said to result from the mere fact that a vessel has once been injured and repaired, depending upon prejudice or apprehension, when, in truth, the intrinsic value of the vessel is made good, is indefinite, uncertain and variable. The estimate thereof will depend upon the fears or caprices of proposed purchasers, and will fluctuate according to the fancy or imagination of witnesses."

Again, appellant is in error in saying that the case of *The Favorita* went to the Supreme Court *on the whole record*, and was affirmed in the 18th Wallace, 598. On the appeal to the Supreme Court, *The Favorita* was the sole appellant, and the only questions presented were those of negligence and demurrage, the question of the right to recover damages for permanent injuries not being involved before the Supreme Court.

The case of *The Osceola*, 34 Federal 921, recognizes the rule of law contended for by appellee. The evidence is not set out either in the opinion or in any statement of facts in that case, and hence it cannot be said to be an authority for or against either of the parties to this controversy.

The quotation contained in appellant's brief from the case of *The Isaac Newton*, 4 Blatchf. 21, discloses that the opinion in that case is of no controlling importance in the determination of this controversy. The claim for permanent injuries was based upon the mere opinion of the master and mate, which did not rest upon any sufficient facts. The shipmaster who repaired the ship testified that "she was thoroughly repaired and was put in as good condition as before the injury." The whole value of the vessel before

the injury was only \$2,500, while the cost of repairs was more than \$1,800. The Court said:

"After this amount of expenditure, I am inclined to agree with the shipmaster that she must have been in as good a condition as before the injury, and shall accordingly disallow the claim of \$800."

The statement in appellant's brief that the Supreme Court has sustained Judge Nelson's ruling in the case of *The Isaac Newton* "as to conjectural and speculative damages," is again misleading and incorrect. In the case of *The Isaac Newton* two questions were involved—one a claim for permanent injuries and the other a claim for demurrage.

The case of *The Conquerer*, 166 U. S. 128, involved the question of demurrage, and the case of *The Isaac Newton* was cited in the consideration of that question only.

The same is true of the case of *The R. L. Maybey*, 4th Blatchf. 439, and *Sturgis vs. Clough*, 1 Wallace 269.

Proctors for appellant claim to have quoted in their brief all the testimony offered upon this point. In this, however, they are mistaken. They have omitted some very material testimony.

Appellee offered in evidence the testimony of Robert Moran, the head of the Moran Ship Building Company, one of the most capable and experienced ship builders in the United States, and that of Captain H. K. Hall, the head of the Hall Bros. Marine Railway & Ship Building Company, a ship builder of fifty years' experience, and widely known throughout the entire Pacific Coast.

Mr. Moran, after having testified to making a survey and appraisalment of the injuries to the ship caused by the collision, gave the following testimony:

“Q. You state in that report that you estimate the damages to the ship of \$8,500, and \$1,000 for discharging and reloading the lumber in the ship. I will ask you what you have to say as to whether that is a reasonable and fair estimate of the damages to the ship and the expense of unloading and reloading?”

A. Well, that is a reasonable estimate for the cost of repairing the ship, as well as she could be repaired. *I do not really consider that it makes the ship as good as she was before she was injured.*

* * * * *

Q. What, in your opinion, would be her damages, then, after being repaired as fully as would be practicable, in accordance with your survey and in excess of the cost of making such repairs?

A. The damages this ship sustained and the depreciation, after the repairs had been made in accordance with these specifications, I should judge would be probably ten per cent.

Q. In other words, her permanent damages, which could not be overcome by any repairs put upon her, would be ten per cent. in addition to the cost of repairing her as fully as she could be repaired?”

A. That is my judgment.”

(Printed Record, pp. 155-156.)

He then fixes the amount of permanent damages at \$6,000.

Captain Hall, after testifying that he had made a survey and appraisalment of the cost of repairs to the ship, gave the following testimony:

“Q. I will ask you to state whether the repairs of the ship as contemplated by this report and appraisalment would put the ship back in the condition that she was immediately before the collision which caused these damages?”

A. It would not.

Q. Well, why not?

A. *Because the strain that had been put upon the vessel, the wrenching and the twisting that was caused by the collision, had damaged that vessel to an extent that could not be replaced by any repairs that could be put upon her.*

Q. Would that affect the life of the ship?

A. It would take the vitality, I should say, of at least 10 per cent. out of the vessel.

Q. Now, after making the repairs contemplated by that survey, how much, if any, would you say that that ship was worth less than it was immediately before the collision which caused these damages?

A. Well, I should say about \$6,000."

(Printed Record, pp. 164-165.)

Cross-Examination.

Q. You say that you estimate the permanent damages to this schooner at ten per cent.?

A. Yes, sir.

Q. Well, was there anything strained or broken about the vessel or the hull of the vessel?

A. There was something that was remarkable, that showed a tremendous strain that had been wrought upon that vessel; the masts from the deck down to the keelson, where it was stepped into the keelson, had been strained; a severe strain that came upon the masts had split the keelson for the length of 60 feet and it was ruined.

Q. Did you renew that?

A. Yes, sir.

Q. That is included in your bill, is it?

A. Yes, sir.

Q. Now, after you renewed them did not that make her as strong as before?

A. It made her as strong as before, that portion of the work fully as strong as before.

Q. And that would apply as to the other repairs that you made, would it not?

A. All the other repairs, yes.

Q. Be just as good as they were before?

A. As far as the repairs were concerned, but it don't relieve the vessel from the strain.

Q. Well, was the vessel wrenched any?

A. Yes, sir.

Q. Twisted?

A. Of course, necessarily must be.

Q. Well, was she?

A. Certainly, she was.

Q. Well, in what way, outside of the keelson, that you spoke of?

A. *Oh, the general strain: she showed it by the oakum that had started out of her sides, necessitating re-calking her all over."*

(Printed Record, pp. 170-171.)

Proctors for appellant in their brief, page 15, say:

"There is not a single word in it [the testimony] which shows or tends to show that complete repairs were not made. The entire sum expended, for which the court below allowed damages in full in the sum of \$9,388, is in itself sufficient to warrant the belief that neither the owners nor the builders stinted themselves in any particular in making these repairs."

As a matter of fact, this sum was allowed by the court "for expenses paid for repairs, and for unloading and re-loading, and necessary expenses of the ship during seventy-four days of detention."

In the case of the schooner *Transit*, 4th Ben. 138, an allowance was made of damages for permanent deterioration. In that case, Mr. Justice Blatchford said:

"As to the first exception, the item of \$500 for 'permanent damage or deterioration' must, I think, be allowed. Williams, who built the pilot-boat, and who also repaired her, fixes her permanent deterioration at that amount, at least. She was only five months old, and the Commissioner appears to have adopted the lowest sum testified to by any witness. The weight of the evidence is decidedly with the allowance of the item."

In the case of *The Helgoland*, 79 Fed. 123, such an allowance was likewise made. In that case the Court said:

"It seems to me manifest from the nature of the case, as well as from the testimony, that a boat thus sprung and twisted has not the endurance or the life of a boat not thus strained and out of shape. The qualifications in Mr. Pierce's testimony, reading it all together, show, I think, that what he means is, that for present actual use she has all-sufficient strength to sustain contacts and collisions as before; but that she was built with a considerable surplus of reserve strength, which does not remain in the same degree as before. * * * The allowance here is not on the vague notion that she is not as good, or will not sell for as much, simply because she has been in collision, when everything discoverable has been apparently rectified and repaired. Here what remains is palpably not repaired, and could not be without great expense. This boat was one of the finest of the kind ever built, costing about \$21,000 a few months only before the accident. An allowance of between 8 and 9 per cent. for the inferior value and enduring power of the boat is, it seems to me, a fair and moderate allowance, of which the defendant should not complain."

According to the testimony of the witnesses, the schooner "Stimson" was wrenched and twisted to such an extent that the oakum had started out of her sides. It is clear from the testimony of Mr. Moran and Captain Hall, that it was not contemplated by them that the repairs sug-

gested in their survey and report would restore the schooner to her condition prior to the collision.

In the case of *M'Ilvaine*, 126 Fed. 434, where damages for permanent injuries were allowed, it is said by the Court:

"This defective condition alone, which no effort was made to remedy, on account of the expense incident to the same would justify the allowance made by the commissioner, and the proof is that it affects the sale value of the barge \$2,000. It was understood at the time of the repairs that the work done was by no means sufficient to place the barge in the condition she was before the collision, and that from four to five thousand dollars would be necessary for that purpose, which sum the owner was unwilling to expend, not knowing to whom the fault of the collision would be attributed; and only such amount as would place the barge in a safe and seagoing condition was expended."

II.

ALLOWANCE OF INTEREST.

Interest was computed and allowed in this case from the 25th of March, 1902, which was after the completion of all repairs, and after all costs and expenses had been incurred and paid. Interest could perhaps properly have been allowed on some of the items from an earlier date, namely, from the date when any expenditure or payment was actually made. The delay in the ultimate determination of this case was solely for the convenience and accommodation of the appellant and his proctors. After the decision by the Court on the merits, the case was further delayed by a motion for rehearing interposed by proctors for appellant, and hence a decree was not entered in this cause until November 7, 1904, nearly three years after the date of the collision. Whatever this appellee was entitled to recover was due it at least as early as the 25th day of

March, 1902, the date from which interest is computed; and the issue of this proceeding discloses that from that date this sum was wrongfully withheld by appellant. Appellee cannot, therefore, be fully compensated without the allowance of interest.

It is true, as has been held by this Court in *Burrows vs. Lownsdale*, 133 Fed. 250, that the allowance of interest is a matter for the discretion of the Court; but this is true in the sense that its discretion is to be exercised in determining whether an added sum by way of interest is necessary to make complete compensation. Interest is not allowed, as claimed by appellant's proctors, in the way of punitive or quasi-punitive damages. Its allowance proceeds entirely upon the theory of compensation; and this is not affected by the question whether the loss is partial or total. In support of these views see,—

The America, 11 Blatchford 485.

The Morning Star, 4th Bissell 62.

The Baltic, 3 Benedict 195.

The Bulgaria, 83 Federal 312.

The Illinois, 84 Federal 697.

The Oregon, 89 Federal 520.

The John H. Starin, 116 Federal 433.

The Mahanoy, 127 Federal 773.

In *The America*, 11 Blatchford, *supra*, it is said:

“Where the value of the thing lost, or the cost of repairs and the like, are the test or measure of recovery, and the amount of damages becomes mere matter of computation, interest is necessary to indemnity as the allowance of the principal sums. But, if the allowance of interest rests in discretion, still, the indemnity of the party for injury from a collision occurring through the fault of another vessel, should be the object of the Court in the allowance of damages. In this view such allowance was, I think,

proper. It is, in such case, not allowed as punishment. It is not like the allowance of punitive damages in actions of slander, assault and battery, and like cases. It gives indemnity only."

In *The Illinois*, 84 Federal, *supra*, it is said:

"The sum called interest added to the \$5,000 was necessary to make full compensation at this time. It is not strictly interest—which is due only for the withholding of a debt—but the compensation for the permanent injury to the vessel was due as of the time when it was inflicted, and the addition of what is called interest is justly added for withholding it. If the respondent's position in this respect were sound, no compensation on this account would be due until such time as the vessel might be sold. It is not sound, however; \$5,000 of the value of the vessel, as the commissioner has found, was destroyed by the collision, and the libelant was thus deprived of this amount of his property. He was justly entitled to be paid for it when deprived of it, and such payment being withheld, the usual compensation for the withholding of a debt is the common method of compensating for the withholding of damages due for a tort."

III.

DEMURRAGE.

At the time of the collision, the schooner "Stimson" was engaged in carrying lumber from Ballard to the port of San Pedro, in which trade she had been engaged ever since her construction. She was at the time under charter to carry the cargo then being loaded, at the rate of \$7.00 per M. Her average time for the completion of a voyage was sixty days; and the time lost by reason of this collision was ninety days. The evidence did not disclose, as suggested by proctors for appellant, that other vessels were engaged in this particular trade between the ports named, and no expert or other testimony was given in re-

spect to any customary or fixed market price for the charter of vessels generally engaged in the same carrying trade.

Libellant introduced evidence not only of the particular charter then in hand, but of the net earnings of preceding voyages. The criticism suggested in appellant's brief, respecting the proofs of the expenditures of libellant's vessel during the time she was laid up for repairs, is wholly unjustified. The receipted bills and itemized vouchers for the expenditures were introduced. Some of the items involved in this controversy were contained in bills or vouchers that embraced the entire expenditures of the month of December, hence it became necessary to introduce these vouchers; but ample and clear explanation was made of each voucher, and every item appearing in any voucher not properly chargeable as an expense arising out of or incident to this collision was pointed out and excluded from the libellant's claim.

Even if there were merit in the contention that the market price for the use of such a vessel is the best and most satisfactory evidence, still it is submitted that, the evidence offered by libellant being the only evidence upon the subject, the objection of appellant must fall. The evidence was at least competent, if not the most satisfactory or conclusive, and, standing alone in the case, the Court must accept it and be governed by it in determining the damages of appellee for the wrongful detention of its schooner.

But this evidence is competent; indeed, it offers, under the facts in this case, the most complete and accurate mode of ascertaining the actual damages suffered by appellee for the loss of the use of its vessel occasioned by the collision. It is not problematical, speculative or uncertain; it measures exactly the loss sustained. The intro-

duction of this character of testimony is abundantly sustained by the authorities.

Williamson vs. Barrett, 13 Howard 101.

The Potomac, 105 U. S. 631.

The Bulgaria, 83 Federal 312.

The Belgeland, 36 Federal 504.

The Margaret Sanford, 37 Federal 148.

The State of California, 54 Federal 404.

The latter case was decided by this Court and must now be held to establish the rule for its guidance in the determination of this question. In that case, this Court said:

“While the evidence in this case does not contain opinions or estimates of the value of the use of the steamship during the time of her detention of persons having knowledge qualifying them to testify as experts, it does show the facts as to the number of days lost while the damages caused by the collision were being repaired, and shows the average daily earnings of the vessel for a period extending from six months prior to, to the end of six months subsequent to the date of the collision, from which the court could as well determine the capacity of the ship and the condition of the trade in which she was then engaged, and make a fair estimate of the value of her use during the time of her detention, as from expert evidence. The fact that another vessel belonging to the same owner was used as a substitute for the disabled steamer during the time of her detention should not militate against the right to compensation, nor afford just cause for awarding less than would be allowed if the owner, from lack of enterprise or inability, failed to have an available substitute for use in such an emergency. Upon consideration of the evidence, we are satisfied that the amount allowed for demurrage is reasonable.”

IV.

PRESUMPTION OF FAULT.

What is said by proctors for appellant in the separate discussions of the fifth and sixth assignments of error may be considered together. They present but a single question of law. According to the proofs in this case, the "Stimson" was riding securely at her anchor. The "Rickmers" broke from her moorings and drifted down upon her, causing the injuries complained of. Under these facts, the burden is upon the "Rickmers" to show affirmatively that the collision was the result of inevitable accident or a *vis major*, which the exercise of proper precautions and good seamanship on her part could not have prevented.

The Louisiana, 3 Wallace 164.

The Fremont, 3 Sawyer 571.

The Brig Bearer, 2 Benedict 118.

The A. R. Wetmore, 5 Benedict 149.

The Schooner Duchess, 6 Benedict 48.

The Scervn, 113 Federal 578.

The Andrew Welch, 122 Federal 557.

There is nothing in the Laws of Oleron or the Ordinances of Wisbury in conflict with the rule above announced. It is true they recognize the doctrine that the consequences of an inevitable accident, not resulting from the fault of either party, must rest where they fall, but this is not alone the rule of the admiralty. The quotation in appellant's brief from the Black Book of the admiralty presents no different rules of law than those above stated.

V.

THE FAULT OF THE "RICKMERS."

The eighth and ninth assignments of error may be discussed together. They involve but one question, the fault of the "Rickmers." Applying the rules of law above announced, the "Rickmers" has manifestly failed to excuse herself from fault. And her fault is not limited to a single act of negligence. In her first attempt to anchor she met a misadventure, which, in view of the state of the weather, should have cautioned her officers in respect to the dangers of the anchorage, and the necessity of extra precautions if she saw fit to renew her attempt to anchor at the same place. After she had dragged her anchor for more than eleven hundred feet, and barely avoided a collision with the "Corona," she permitted herself to be taken back approximately to the same place for a second anchorage, without sighting her port anchor to see whether the anchor or chain had been damaged or fouled. While being towed back she allowed her port anchor to drag upon the bottom over a distance of eleven or twelve hundred feet. In such a manoeuvre, while proceeding back over the course upon which she had drifted, her chain was exceedingly likely to foul in the flukes of the anchor, and thus to wholly destroy the usefulness of the port anchor. After she had come to anchor a second time and was riding upon her starboard chain, she should, before permitting the tug to depart, have hoisted her port anchor and examined it to see that it was clear and uninjured. She should also have required the tug to swing her bow so that her port anchor could be again dropped in such a position as to give a proper spread to the chains of her two anchors. Instead of observing these precautions, her port anchor was permitted to remain in the position in which it was left

after the ship was towed back. In other words, it must necessarily have been trailing aft. In this position the ship would be held entirely by the starboard anchor until such time as it dragged sufficiently for the ship to fetch up on its port chain. Only thirty fathoms of chain was paid out on the starboard anchor, and forty on the port. In view of the disabled condition of the port windlass and the destruction of the compressor, the "Rickmers" was not justified in placing much reliance upon her port anchor. It was made fast by a relieving tackle attached to the chain by an open iron hook not more than an inch and a half or an inch and three-quarters in diameter. Under all these circumstances, extra precaution was required in the selection of a place of anchorage and in the use of the starboard anchor. In view of the size of the "Rickmers," the fact that she was in ballast, and the character of the weather, more than twice the scope of chain should have been paid out on the starboard anchor in the first instance; and as the storm increased additional scope should have been given. If these precautions had been taken, it cannot now be presumed that she would have broken from her moorings. The other ships in the harbor rode securely at their anchors. It is claimed by appellant that the "Corona" dragged her anchor. This does not clearly appear from the testimony. The captain of the "Corona" testifies that after the "Rickmers" had begun to drag the officer on the deck of the "Mildred" sung out to him that his ship was dragging, whereupon he paid out more chain, and his ship held. It is quite probable that the suggestion that the "Corona" was dragging was an inference drawn solely from the fact that the "Rickmers" was changing her position; but in any event, the "Corona" weathered the storm, and at least did not drag at all after further chain had been paid out. According to the testimony of Mr. Salisbury, the wind did not exceed from twenty to

twenty-five miles an hour at the time when the "Rickmers" must have first begun to drag. The only time when the storm was one of unusual violence, was during the five minutes immediately preceding the collision with the "Stimson."

But the excuse is offered by appellant that the "Rickmers" could not pay out more chain upon her anchors because there was not sufficient freeway between her and the "Mildred" and "Corona." If the Court will take a pair of dividers and measure the distances on the Government chart, it will discover that the space between the "Rickmers" and each of these vessels was more than eleven hundred feet, ample room to give abundant additional scope to her chains. But if it be assumed that the space was insufficient, the "Rickmers" cannot be excused from fault. In the language of the court below,

"The excuse offered for not paying out more cable than forty fathoms on the port anchor, and thirty fathoms on the starboard anchor, was that greater length of chain would have caused the "Rickmers" to swing dangerously near the "Mildred" and the "Corona." This proves that inexcusable error was committed in choosing the place of anchoring, and the captain of the "Rickmers" in his testimony claims that he was not satisfied with the location, but dropped anchor at the place indicated by the captain of the tug, who it is insisted must be held responsible as a local pilot. This, however, does not relieve the "Rickmers" from legal liability. She is answerable for damages caused by the inexcusable errors of whoever for the time being had control of her movements, whether in the capacity of master, chief mate, or local pilot."

(Printed Record, pp. 574-575.)

When the "Rickmers" came to anchor the second time there were known indications of the danger of drifting, in view of the character of the anchorage and the condition

of the weather. Ordinary prudence required that her officers should take extraordinary precautions.

The Auerly, 58 Federal 795.

The Sharpes She, 60 Federal 925.

The Sapphire, 11 Wallace 164.

The Energy, 10 Benedict 158.

A number of cases are cited in appellant's brief, in which different courts have held upon the facts involved in the respective cases, that the collisions were the result of inevitable accident. These authorities can no more assist the Court in the determination of this case than would the citation of cases by appellee, in which the courts have held that collisions were not attributable to a *vis major* or an inevitable accident; and hence we forbear to thus burden this brief.

VI.

The first, second, third, fourth and tenth assignments of error are discussed together by appellant. They involve his contention that the "Stimson" was guilty of fault contributing to the collision. In case of a collision between two anchored vessels, one of which dragged its anchor, while the other did not, the rule of law is that the latter is presumed to have been free from fault.

The Scerera, 113 Federal 578.

The Mary Frazer, 26 Federal 872.

The Auerly, 58 Federal 795.

The Carl Konow, 64 Federal 815.

The Schooner Duchess, 6 Benedict 48.

In this case the "Rickmers" is clearly shown to have been guilty of several distinct and separate faults, each of which was adequate to account for the collision.

"Where one vessel, clearly shown to have been guilty of a fault adequate in itself to account for a collision, seeks to impugn the management of the other vessel, there is a presumption in favor of the latter, which can only be rebutted by clear proof of a contributing fault, and this principle is peculiarly applicable to a vessel at anchor."

The Oregon, 158 U. S. 186.

Not only has the "Rickmers" failed to overcome this presumption in favor of the "Stimson," but, on the other hand, it clearly appears from the evidence that the latter was without fault. She was riding securely with one anchor upon one hundred and five fathoms of chain. A watchman was on deck. The weather was partly cloudy and the wind and rain came in squalls. It is urged that the watchman should have discovered the danger of collision in time to have called his superior officer, so that the "Stimson" might have taken some action to avoid the collision. But it should be remembered that the "Rickmers," when she first dragged her anchor, proceeded in a northwesterly direction toward the "Mildred." The wind was shifting from southeast to southwest. The course of the "Rickmers," after passing the "Mildred," must necessarily have been an exceedingly erratic one. If the watchman upon the deck of the "Stimson" had discovered that the "Rickmers" was adrift, he could not have anticipated that her course would bring her into collision with the "Stimson" until the violent gale came on from the southwest during the last five minutes before the collision actually occurred.

It is suggested that the "Stimson" might have hoisted a sail and thus have swung free from the "Rickmers." The deck of the "Stimson" had been cleared for the purpose of taking on a cargo of lumber; but even had not this been so, such a manoeuvre would have been one of great hazard.

In view of the erratic course of the "Rickmers," the hoisting of a sail upon the "Stimson" would have been quite as likely to throw her athwart the course of the "Rickmers" as to clear her. Besides, the violence of the gale, after it could have been ascertained that a collision was probable, was such as to render an attempt to hoist a sail impracticable, if not impossible. No such attempt was made upon the "Rickmers," and it cannot, therefore, be urged that the failure to do so on the part of the "Stimson" was a fault.

The claim that such an attempt by the "Corona," in the afternoon was a success, offers no parallel. When this was done it was still light, and only a moderate wind was blowing. The course of the "Rickmers" does not then appear to have been shifting. Neither did the "Rickmers" bear down upon the bow of the "Corona," as she did upon the bow of the "Stimson."

What is said in the opinion of the trial court on this subject may be here quoted with profit:

"The captain of the "Rickmers," in his testimony, blames the "Stimson" for failure to put her helm hard-a-starboard. He appears to think if that had been done the collision would not have happened. It is my understanding that a vessel cannot be made to change her position by use of her helm when she does not have steerageway, and the testimony of the captain does not directly controvert this principal of natural philosophy, nor does he assign any reasons for supposing that if the "Stimson's" helm had been put hard-a-starboard it would have had any effect either to check or change the movement of the "Rickmers." The argument in behalf of the respondent, based upon testimony of expert witnesses, assumes that it would have been possible for the "Stimson" to have used her sails in a manner to have forced her to swing on her cable inshore, so that the "Rickmers" might have passed without colliding. This, however, is only a suggestion of

a mere possibility. To be fair, the "Stimson" cannot be convicted of a fault upon any theory which ignores the obvious hazard of any attempt to set her sails at a time when the wind was blowing with such force as to drive the "Rickmers," without sails, and against the resistance of her anchors. If the "Stimson's" sails had been set and filled for the purpose of changing her position while the gale continued, in which direction would she have moved, and where would she have fetched up? Unless an intelligent answer to this inquiry can be given, there can be no basis whatever for supposing that the "Stimson" could have changed her position without increasing instead of diminishing the danger to which she was exposed."

(Printed Record, pp. 571-572.)

Upon the appeal of the "Rickmers," the judgment of the District Court should be affirmed.

Respectfully submitted,

HUGHES, McMICKEN, DOVELL & RAMSEY,

Proctors for Appellee.



IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

C. SCHWARTING, Master and Claimant of the
German Bark "ROBERT RICKMERS," her
tackle, apparel and furniture, *Appellant*,

vs.

THE STIMSON MILL COMPANY, a corpora-
tion, *Appellee*.

THE STIMSON MILL COMPANY, a corpora-
tion, *Cross-Appellant*,

vs.

C. SCHWARTING, Master and Claimant of the
German Bark "ROBERT RICKMERS," her
tackle, apparel and furniture, *Cross-Appellee*.

FILED
JAN 30

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF WASHINGTON, WESTERN DIVISION.

BRIEF OF CROSS-APPELLANT

HUGHES, McMICKEN, DOVELL & RAMSEY,
Attorneys for Cross-Appellant.



No. 1149

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tion, *Appellee*.

THE STIMSON MILL COMPANY, a corpora-
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vs.

C. SCHWARTING, Master and Claimant of the
German Bark "ROBERT RICKMERS," her
tackle, apparel and furniture, *Cross-Appellee*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF WASHINGTON, WESTERN DIVISION.

BRIEF OF CROSS-APPELLANT

The Stimson Mill Company, libellant in the District
Court, has taken a cross appeal from the judgment and

decree entered by the District Court in its favor, in which it complains of the amount allowed by that court as demurrage. Its assignments of error are as follows:

1. The court erred in allowing libellant only the sum of \$4292.00 for demurrage.

2. The court erred in allowing demurrage for only 74 days, whereas libellant's ship actually lost ninety days by reason of the said collision, and was entitled to demurrage for the full period of said ninety days.

A determination of the complaints urged by these assignments of error involves only a question of fact. The court rightly fixed the rate of demurrage at \$58.00 per day. This figure was correctly ascertained by the court from the undisputed facts in the case, which were, that the net earnings of the ship for a single voyage was \$3500.00, and that the round trip, constituting the entire voyage, consumed an average of sixty days. The court, however, inadvertently, we think, fell into an error in ascertaining the number of days lost by libellant's ship by reason of the collision. This occurred, doubtless, because the collision was on the 25th day of December, 1900, and the evidence disclosed that the repairs of the ship were completed by the 10th day of March following. This, however, does not represent the time actually lost by libellant's ship. At the time the collision occurred, the ship had already been engaged in loading fifteen days and had taken in 650,000 feet of lumber of a total cargo of 950,000 feet. This lumber, of course, had to be removed before the ship could be repaired, and after the repairs were completed it took another fifteen days to reload the lumber so taken out. Until this was done, libellant was not restored to the situation in which it was at the time of the collision, and hence libellant is denied compensation for fifteen days' use of its ship, actually lost to it.

Captain Peterson, master of the "Stimson," gave the following testimony on the questions here involved:

"Q. How long had it taken you to put the cargo in her that was in her at the time the collision occurred?

A. Fifteen days.

Q. How long did it take you to again put the same kind of cargo in?

A. Fifteen days.

Q. How much time was lost by reason of this collision on that ship?

A. Ninety days."

(Transcript, pp. 197-198.)

Again, on page 225 of the Transcript, the same witness testified as follows:

"Q. You have already stated that the total time lost by this collision, from the time of the collision until your ship was repaired and its cargo restored to the extent that it was originally at the time of the collision was 90 days?

A. Yes, sir."

The District Court may have been confused by the fact that the accounts as shown by the exhibits introduced in evidence were, in some instances, made up from the 10th day of December to the 10th day of March. This is explained, however, by the following testimony of Captain Peterson:

"Q. Now, in some instances these [accounts] commence as early as the 10th of December, but they do not any of them run later than March 9th?

A. No.

Q. I will ask you, whether in these cases you carried

in the period from March 9 to March 25 when you were loaded as far as you had been at the time [of the collision]?

A. No, I paid the crew up until March 9 or 10.

Q. So that while you commenced it on December 10, 15 days before the 25th, you did not charge for the corresponding 15 days between March 10th and 25th?

A. No.

Q. When you were reloading?

A. No, it was charged up on my next statement, the statement for the coming trip.

Q. But that statement is not included in these bills?

A. No sir.

Q. So that the actual amount of time is only the time lost by reason of this collision?

A. Yes sir.

Q. And while in this bill you have included 14 days before the collision——

A. We have not included 15 days after March 10th.

Q. After March 10th to 25th, after you had the vessel reloaded as far as she was before the collision?

A. Yes sir.

Q. So that there is no excess charge?

A. No, sir."

(Transcript pages 230 and 231.)

F. D. Stimson also testified that the vessel was not able to earn anything during the period of ninety days while undergoing repairs and reloading.

(Transcript page 237.)

On the point involved in this cross appeal, the testimony is without conflict. The time actually lost by the

ship "Stimson," on account of the collision was ninety days, and for that loss, it is entitled to demurrage, at the rate fixed by the court, to-wit, \$58.00 per day. The judgment of the District Court should be corrected, so as to allow this additional sum to libellant.

Respectfully,

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Stimson Mill Company, Libellant
and Cross Appellant.



